Index to letters on the proposed duplicate account system.

Letter No.	From	Page.
1	The Hon. Mr. Justice Batchelor	1
2	The Hon. Sir Narayan Chandavarkar	2
3	The Hon. Mr. Justice Heaton	3
4	Mr. E. Maconochie, Collector of Dhárwár	4
5	„ Leggatt, District Judge „	32
6	„ Swifte, Collector of Poona	44
7 & 7-A	„ C. C. Boyd, District Judge of Poona	45 & 47
8	„ Brown, Collector of Belgaum	49
9	„ Crump, District Judge of Belgaum	49
10	„ Mountford, Collector of Sátára	54
11	„ W. T. W. Baker, District Judge of Sátára...	58
12	„ J. L. Rieu, Secretary to Government, General Department ...	60
13	„ Smart, Director of Agriculture	61
14	„ Ewbank, Registrar, Co-operative Credit Societies	61
15	„ Robertson, Administrator, Junágadh State...	62
16	„ Hatch, Collector of Sholápur	65
17	„ Hervey, District Judge of Sholápur	68
18	„ Kabraji, Collector of Bijápur	68
19	„ F. K. Boyd, District Judge of Bijápur	69
20	„ Sedgwick, for Collector of Surat	69
21	„ Advani, District Judge „	72
22	„ Rothfeld, Collector of Broach	78
23	„ Waterfield, District Judge of Broach	79
24	„ Painter, Collector of Ahmedabad	79
25	„ Kennedy, District Judge of Ahmedabad	84
26	„ Chuckerbutty, Collector of Kaira	85
27	„ Wales, Collector of Thána	90
28	„ Dikshit, District Judge of Thána	91
29	„ Thomas, Collector of Kolába	96
30	„ Ghosal, Collector of Panch Mahál	98
31	„ A. F. Maconochie, Collector of Ahmednagar	103
32	„ Madgaonkar, District Judge „	104
33	„ Bomanji, Collector of West Khándesh	108
34	„ Varley, District Judge, Khándesh	109
35	„ Simcox, Collector of East Khándesh	111
36	„ C. M. Baker, Collector of Násik	112
37	„ Palmer, District Judge „	116
38	„ Bonus, Collector of Ratnágiri	120
39	„ Barrow, Commissioner, N. D.	123
40	„ Taleyarkhan, District Judge, Ratnágiri	124
41	The Hon. Sir Vithaldás Thackersey	137
42	The Hon. Khan Bahadur Nowrojee Pestonjee Vakil, C.I.E. ...	141
43	The Hon. Sardar Rao Bahadur Motilal Chunilal	143
44	The Hon. Mr. F. G. Pratt, Settlement Commissioner	146
45	Khan Bahadur Jacob Israel, Karbhari, Aundh State	147
46	Mr. MacGregor, Provincial Superintendent of Census	151
47	Rao Bahadur K. J. Agashe, District Deputy Collector (retired) ...	153
48	Mr. Khandalawala, Special Judge under the Dekkhan Agriculturists' Relief Act (retired).	154
49	The Hon. Mr. R. P. Karandikar	155
50	Mr. Shepherd, Collector of Salt Revenue	157
51	The Honourable the Chief of Ichalkaranji	159
52	Mr. G. Monteath, Collector of Kánara	160
53	„ Vernon, District Judge „	162
54	„ Lucas, Commissioner in Sind	163
55	„ E. M. Pratt, Judicial Commissioner of Sind	164
56	„ Fawcett, Additional Judicial Commissioner of Sind	167
57	„ Webb, Deputy Commissioner, Thar and Párkar	168
58	„ Blathwayt, Collector of Hyderabad	169
59	„ Wild, District Judge „	172
60	„ Martin, Collector of Lárkána	173
61	„ Chatfield, Collector of Sukkur	174
62	„ Lawrence, Collector of Karáchi	175
63	„ Murphy, District Judge, Sukkur-Lárkána	176
64	„ Smyth, Deputy Commissioner, Upper Sind Frontier	177

Digitized with financial assistance from

Shri Brihad Bhartiya Samaj

on 31 October, 2019

No. 1.

Bombay, 17th July 1912.

From—The Hon. Mr. Justice S. L. Batchelor,
Judge, His Majesty's High Court, Bombay;

To—The Hon. Mr. S. R. Arthur, on Special Duty.

In reply to your letter No. 54 of 29th June—6th July 1912, I have the honour to say that I cordially approve of the system of accounts which you suggest.

2. I am much impressed by your observation that "the average agriculturist is by no means in the hands of the savkar to the same extent as the previous generation of agriculturists", and my own judicial experience fully confirms your further remark that in some cases the debtor is just as ready to overreach the creditor as the latter is to overreach him.

3. In the light of these facts it appears to me plain that differential legislation in favour of a class, which is necessarily attended by grave and far-reaching disadvantages, should be carefully restricted. Ultimately, as you point out, no legislation can avail to save a class which will not move a hand to save itself, and in the long run all special Acts must fail which run counter to a law as inflexible as the law of gravity. While, therefore, I agree that some special measures are needed for preventing agricultural lands from falling wholesale into the hands of the non-agricultural classes, I cannot concede that your scheme is exposed to any substantial objection merely because it will not save an agriculturist who is bent upon industrial suicide.

4. I wish to say further that one aspect of your proposals which especially commends itself to my own mind is your consecration of the written document. As things stand now, the Dekkhan Act would be virtually waste paper without the provisions contained in section 10-A, and the mischief which may be, and, as I think, is, wrought by section 10-A seems to me incalculable. In my view it is in the last degree mischievous and demoralising to teach Indian villagers that they can escape their solemn written engagements by the all too simple expedient of calling oral evidence in repudiation. The provisos to section 92 of the Evidence Act constitute, I think, sufficient modification of the general rule; to go beyond this is to invite Indian litigants to flood the Courts with perjury. Your investigations will probably enable you to pronounce how far I am right in thinking that this result has already been attained.

5. These are the main grounds on which I would base my opinion in favour of the proposals in paragraph 5 of your letter. Section 10-A of the Act would disappear, and there would be no appeal from the parties' own signatures. On this subject you have, as it seems to me, stated the rival arguments with fairness and completeness, and I cannot say more than that, in my judgment, the considerations in favour of your proposals are entitled to prevail. If, however, this view is accepted, it will be necessary to provide ample safeguards for the protection of the usually illiterate debtor against the usually literate creditor; but if your scheme is in itself sound, I apprehend that all measures of detail which it involves as logical or practical concomitants, should be accepted without demur. Thus I would support the suggestions that the only account books used should be paged and sealed and issued from a Government office; that persons desirous of lending money to agriculturists should be registered and licensed; and that entries should be checked as frequently as possible by superior officers. In the case of an illiterate debtor, I would also require such entry to be authenticated by the person who read and explained the entry to the debtor. In my judgment some such measures as these are necessarily required to prevent the defeat of the object of the proposed legislation, and if that legislation is accepted as desirable, I am not aware what valid objection can be urged to these subsidiary measures of procedure. Honest creditors would, as it seems to me, have nothing to fear from these provisions, and they presumably are the only class whose interests fall to be considered. One thing at least seems clear, and that is, that it would be far better not to legislate at all than to legislate half-heartedly, by which I mean to

legislate so as to seem to secure in words what in fact will manifestly be evaded. In this context I would further suggest that, if your proposals are adopted, sustained and persistent efforts should be made by all the District Officers, from the Collector down to the village agency, to bring home to the minds of the peasants the nature and meaning of the new legislation.

No. 2.

Bombay, 22nd August 1912.

From—The Hon. Sir N. G. Chandavarkar;

To—S. R. Arthur, Esquire, I.C.S., on Special Duty,

Dekkhan Agriculturists' Relief Act.

I. In my opinion, the time has come to take a step forward in the administration of relief and protection to ryots under the Dekkhan Agriculturists' Relief Act by embodying in that law the proposal, contained in paragraph 5 of your circular, viz., making it obligatory on every money-lender to keep a separate account in duplicate of his dealings with each agriculturist-client. In the earlier stages of the enactment, the Legislature had to move with caution, consistent with the conditions of the times. The first evil that had to be tackled in relieving agricultural indebtedness was the systematic attempt on the part of most money-lenders, especially Marwaries, to swell the amount of the debt by treating interest as principal and thereby evading the Hindu law of *dam-dupat*. It was with a view to mitigate this evil that the Legislature empowered the Courts to go into the history of every money-lending transaction from its inception and find out how much was really principal and how much was interest. Wide discretion, subject to certain restrictions prescribed in the Act, was given to the Courts in the exercise of that power. It is true that the Courts have had to do pure guess-work in most cases in ascertaining the history, but that was unavoidable. It is also true that money-lenders have been hit hard in many cases. But we must not shut our eyes to the positive benefit that has accrued from the law so worked. The debtor has had his sense of self-respect increased; and the creditor, his sense of responsibility. It is true that the former feels that he is a favourite of the law whereas the latter fears he has the law against him. But no law which seeks to reform an abuse can adjust the balance nicely either at the beginning or for some years after it has come into force. Both creditor and debtor have been educated, so to say, up to the point of realising the necessity of having certain and clear evidence of every money-lending transaction. That is the stage to which they have been brought by the Act and decisions of our Courts. It is this psychological moment which the Legislature should, I think, utilise, by enacting that every money-lending transaction to which an agriculturist is a party should be evidenced by a separate account in duplicate kept by every money-lender of his dealings with his agriculturist-client. This, as the Act now stands, is left purely to the option of the parties, of the debtor in particular. But people in this country, as in most countries, I believe, will not have recourse to what is for their ultimate benefit, unless the law accustoms them to it by making it obligatory, instead of leaving it optional. Section 65 of the Act provides that an agriculturist shall on demand receive from his creditor an up-to-date statement of account. But where the agriculturist has to depend on his creditor, he cannot be expected to have the decision of character to demand such an account; and then there is the natural disposition of people in this country to let things drift. A debtor may well feel that by demanding an account he is giving his creditor the impression that he distrusts him. No debtor likes to give offence to his creditor in that way. Hence it is that the provision in question has practically remained a dead letter. The Legislature ought to take the responsibility of it and enact that every creditor *shall* supply his debtor with an account containing entries of the transaction, as suggested in paragraph 5 of your circular. This is not likely to be regarded as a hardship.

II. Of course every proposal to relieve an evil is apt to be met with objections. I am old enough to remember what dire things were predicted when the Dekkhan Agriculturists' Relief Act was first brought into force. If it has not proved a panacea for the evil of agricultural indebtedness in the way desired by its most ardent advocates, it has not proved a failure either. Owing to it partly, the agriculturist has been able to hold his own more than he was able to do in times anterior to the passing of the Act; and it will do both the agriculturist and his creditor good to enact that the latter shall keep a separate account in duplicate of his dealings with the former and shall supply one of the copies to the agriculturist. More than all, I think the *educative* value of the proposed system is its best recommendation. It will teach order and method to both parties and foster an increased sense of responsibility.

III. I do no think, however, that accounts so kept should be declared by law to be *conclusive* proof of the entries they contain or the transaction they evidence. Having regard to the state of society in the mofussil, I apprehend the time is not yet when so extreme an operation in the law of evidence can be wisely given to the proposed system. We must move in these matters by stages. The accounts should be declared to be merely presumptive evidence, open to rebuttal. After all, the best and most carefully prepared law has to be administered by the Courts and a good deal depends on the knowledge of human nature and of the requirements of society, etc., of the Judges. Our Courts in the mofussil are now manned by efficient Judges. I would leave it to them in each case to decide what weight should be attached to the accounts under the proposed system, after considering the surrounding circumstances.

IV. The next question is whether the proposed system may not tell hardly on illiterate money-lenders and petty traders, and, in the case of the latter in particular, drive them out of their trade. I do not share those fears. As to illiterate money-lenders, I have seen and known many of them in villages utilise the services of some one who can write. As to petty traders, it must be remembered, account keeping in some form or another forms, as it were, part of the genius of Hindus. That is what struck Sir John Malcolm and the proposed system will be but reviving that genius. It is the step called for by the stage to which the operation of the Act has brought the agriculturist-debtor and his creditor.

V. There is another point to which, although it does not arise from your letter under reply, I should like to refer here. The key to the successful working of the Dekkhan Agriculturists' Relief Act is the conciliation system. There should be a competent and responsible conciliator appointed for every village in the districts to which the Act applies. This, I know, cannot be done at once, but it will become possible in course of time.

No. 3.

22nd July 1912.

Note by the Hon. Mr. Justice Heaton.

I would rather discuss than write on this subject, but will write something.

The system proposed may possibly tend to drive the smaller village money-lender and grain-dealer out of business. Will it have this effect? If it will, should it be done? Will it not reduce the average agriculturist to dire straits? He must borrow somehow. If the smaller village money-lender and grain-dealer goes, will the agriculturist be able to borrow, for example, seed for sowing and food for men and cattle for the period after his own store is exhausted and until the next crop is gathered?

I would advocate a strict method of account keeping were I sure it would not bring about the disappearance of the small village lender. Whether it would do that I cannot say.

For the rest I will assume that it will not. On that assumption I am in favour of the method proposed generally and would apply it to all money or grain-lenders, literate or illiterate. The latter must employ a literate assistant. I

would make the entries conclusive proof in the case of literate and presumptive proof in the case of illiterate debtors.

I would not have thumb impressions—unless taken by a trained person they do more harm than good. This is an opinion I hold very strongly.

I quite agree that it is futile and worse to try to protect those who will not do anything useful to protect themselves and that anything which stimulates the production of false evidence is bad. But persons who cannot read and write are in a very different position from those who can. They cannot rightly be held responsible for documents they execute except on the assumption that they understand them. Can we assume this? We commonly do, but I am not sure it is right. I think myself that we should always require evidence that a document has been explained to an illiterate person before acting on the assumption that he executed it. What is meant by saying no evidence of payment by client to money-lender should be admitted after 30 days? That is a part of the proposal I do not understand.

Registration of money-lenders, sealing and paging of account books by a Government officer, and inspection of accounts by Government officers are all theoretically good; but would not the effect of introducing these matters be to discourage the money-lender too much?

No. 4.

Dhárwár, 30th July 1912.

From—E. Maconochie, Esq., I.C.S., Collector of Dhárwár;

To—The Hon. Mr. S. R. Arthur, on Special Duty, Poona.

Subject.—Receipts and accounts of transactions in which one party is an agriculturist.

With reference to your letter No. 54, dated 3rd July 1912, I have the honour to forward herewith in original a number of replies from officials and others who gave evidence before you in Dhárwár, together with a précis and note by Mr. G. R. Balekundri, District Deputy Collector and Personal Assistant.

2. On perusal of the replies received and on further consideration I see no reason to modify the opinion I expressed verbally that a system on the general lines suggested by you offers great possibilities for good. My opinion is (1) that the system of duplicate accounts should be introduced; (2) that the entries in such accounts duly attested by thumb impressions should be accepted as conclusive proof; (3) that no suit should be entertained if such duplicate accounts are not forthcoming; (4) that the system should be made obligatory on all money-lenders, literate or illiterate; (5) that the accounts should be kept in books paged and sealed, issued by a Government officer; (6) that the licensing of money-lenders and inspection of accounts is impracticable and further an unwarrantable interference with the liberty of the subject.

3. As to (1) I hold very strongly that legislation of the character of the Dekkhan Agriculturists' Relief Act, intended to rescue the chronically indebted classes from the money-lender, though it has to some extent effected the purpose of Government, has had very demoralising effects on the country side and has interfered with the ordinary operations of credit to a harmful extent. It has driven many honest money-lenders out of the market and has left the ryot to the tender mercies of the dishonest savkar, who will find a way through any legislation that ingenuity can conceive, or to the limited alternatives of tagai advances and co-operative credit. As to tagai it *must* be limited in amount. Government have not the machinery for conducting a money-lending business on a vast scale and, even under present conditions, the writing off of arrears irrecoverable owing to careless valuation of security or deliberate dishonesty on the part of villagers and village officers is a matter of daily experience. Under the circumstances an indefinite extension of the system would be very unfair to

the general tax-payer who has to make up the losses incurred. Co-operative credit is in its infancy and the problem is how to provide for the period which must elapse before it becomes a real factor in rural economy and puts the ryot on a competitive footing with the savkar. Our aim must be surely to bring back into circulation the capital of the honest and substantial savkar, and the opinion of Rao Saheb Venkatesh Naik of Ránebennúr, who may be regarded as an eminently worthy representative of that class, is deserving of attention. He believes that the duplicate account system will have the desired effect and I see no reason to disagree with him.

4. I consider that the entries should be accepted as conclusive for the reasons stated in paragraphs 6 and 11 of your letter. The half measure, of giving it a presumptive value only, appears to me worse than useless and will only reproduce all the false swearing and chicanery that flood the Courts at present. I would further allow no period for contesting entries outside a Criminal Court, which is always open to a man who can prove that he has been swindled. Point (3) is an essential part of the scheme, if it is to be tried at all, and calls for no comment.

5. The fourth point is a matter of considerable importance and is apparently a source of much perturbation to most of the witnesses. In my opinion, a vast amount of nonsense is talked about the illiterate savkar. In these days no village is wholly illiterate with the exception of small jungle hamlets and, if a man is sufficiently intelligent to put the machinery of the Civil Courts into motion against his debtors, he can surely be compelled to observe certain simple formalities in the conduct of his monetary transactions. One would think from the views of certain witnesses that every petty monetary transanction was the basis of a prospective civil suit. Evil as the results of protecting dishonest debtors have been, matters are not as bad as all that. Hundreds and thousands of petty monetary transactions occur every day in which no documents pass and no dispute ever arises. These will go on as before and only the solid and honest man, who does not object, and the landshark, who doubtless will object, will have to observe the formalities involved. The latter is quite up to getting documents written and registered. He can just as well get his simple account written and a thumb impression taken.

6. The question of issuing paged and sealed accounts is one which requires further consideration from the practical side. At present I would only venture to express the opinion that the system would be desirable as a check on fraud. The good men will welcome the system as is stated by Rao Saheb Venkatesh Naik. I do not see why the rest should not be compelled to accept it. The means of making such books freely available needs to be worked out.

7. The suggested licensing and inspection of money-lenders would, I consider, be going too far. I am aware of the English practice, but conditions there are entirely different. Avowed money-lenders are far smaller in number, for no one, whose credit is good enough for a respectable bank or firm of solicitors, needs to go to them. No one who has reasonable security to offer has any difficulty in getting a loan from an honest firm. Here a cultivator with excellent security cannot always pick and choose and goes to the most accessible source. Every soul in the country is a money-lender *in posse* and to insist on registration would cause intense and natural resentment. It is one thing to say: "You shall not use our Courts unless you produce accounts" and quite another to say: "You shall not use them unless you take out a license and subject yourself to the inspection of Government officers". The only instance of legislation of the sort that I know of in India, in connection with an ordinary legitimate business, is the Mining Act on the Kolár Gold Field, copied from similar Acts in other gold yielding countries, which requires every goldsmith to be licensed and inspected. There the area concerned is exceedingly limited, a goldsmith need not go there unless he likes, and if he does, must put up with conditions which are essential for the protection of the mining companies, in the absence of whose activities the tract would be an uninhabited waste. It is unnecessary to develop the contrast between the two sets of circumstances.

PRE'CIS OF THE OPINIONS.

Subject.—Dekkhan Agriculturists' Relief Act. The Hon. Mr. Arthur's letter No. 54 of 3rd July 1912.

System of accounts.

Mr. Bengeri.

Scheme appears unobjectionable *to a certain extent.* It will not work successfully in all its details or that it would equally apply to all money-dealings with agriculturists.

Universal application will not be successful because its effect would be very wide and far-reaching and petty and illiterate money-lenders will find it difficult to get a writing agency within his reach and within his confidence as well. It would hamper the now smooth working of transactions between a petty illiterate money-lender and his agriculturist-debtor who deal with each other on mutual credit and good understanding.

Savkars of Mr. Varad's integrity may be few and his example to middling money-lending classes would not be a successful appeal. A dominant spirit for making money by means, legal or illegal, would impel him to make false accounts.

The provision that the debtor should get the entries verified within a month would not be effective if the entries are made already with his consent and with due caution. I would recommend that the matter be left to the choice of parties. Before giving his signature and thumb impression it is a debtor's duty to see or get it to be seen that the entry is rightly made. In case of doubt he is at liberty to refuse his signature. If he is so stupid to connive at all these common-sense rules he does not deserve any pity and should be left to suffer the consequences of his folly. But in case of dispute oral evidence should be admissible.

I am *not* in favour of imposing an obligation on money-lenders to keep their accounts in forms supplied through Government agency with sealing and paging.

It does not seem to be advisable to make the account to be conclusive proof, but there seems no objection to hold it as a strong presumptive evidence.

I would vote for the introduction of the system of licensed money dealers *provided* they are given advantages of Co-operative Credit Societies now supported by Government.

Mr. Madhav Ramchandra Nádgir, Háveri.

The proposed scheme of compelling accounts being kept is good, but it will go hard with illiterate money-lenders; it should apply only to those whose income can be assessed to income-tax. The petty savkars may be excepted.

The rule that no suit can be entertained without an extract from the pass book, that duplicate pass book should be kept, may be made compulsory.

The account entries should be conclusive evidence of matters stated therein.

Account books paged and sealed may be introduced.

The registration and license system seems undesirable as it is likely to put persons to an amount of trouble.

The pass books being paged and sealed by Government, the further safe-guard of the inspection of the books by Government officers is quite unnecessary.

Rao Bahadur Malapur.

I am *not* in favour of the introduction of the account system: our people have not yet reached that state. It will go hard with illiterate savkars.

One of the objects of keeping accounts is to ascertain what money the debtor paid to the money-lender and I would suggest the following remedies :—

the debtor may send his money by money-order ;

he may pay the same to the Sub-Registrar, or

the Head Karkun of the Mamlatdar's office, or

to the clerks of the Civil Courts and obtain a receipt, or pay directly and obtain a receipt.

Neither party should have the least opportunity of adducing oral evidence in respect of payment.

Mr. Raghavendrarao Inamati of Annigeri.

The system of duplicate accounts may work well and cases of fraud and misrepresentation on the part of the savkar may be cured to a great extent, but for the case of an agriculturist, literate or illiterate, *voluntarily* passing a bond for double the consideration he actually receives, there seems to be no remedy and the application of the theory of the survival of the fittest to such a case is rather hard and works against the spirit of the Act. In case such duplicate accounts are kept, I suggest that when an illiterate agriculturist is concerned, the thumb impression must be taken in the presence of at least two witnesses.

Also books of indenture forms sealed with the seal of the Collector are necessary to effectually safeguard the interest of agriculturist.

Periodical inspection by Mamlatdars, etc., is unnecessary. Honorary persons may be appointed to inspect periodically all the accounts of a group of villages, like the Honorary Organizers of the Co-operative Credit Societies.

The proposal does not say to what authority the agriculturist should complain. I should suggest the nearest Magistrate or the Sub-Judge.

Licenses should be issued but no charge be levied for that.

Mr. Padbidri.

Recommends some amendments in sections 64, 65 and 66 and is not so much in favour of the account system proposed so long as the agriculturist-debtor remains illiterate.

The system may be tried experimentally though I hesitate to say that it will do much good.

Even if duplicate accounts be introduced, their production should not be made conclusive evidence and the books be sealed by the Sub-Judge or Mamlatdar.

Licenses to money-lenders may be issued.

Does not recommend attestation of the entries.

Rao Saheb Shivaji Ramchandra Betgeri.

Accounts under Chapter IX of the Act may be made compulsory, but in the case of money-lenders whose dealings do not exceed Rs. 2,000 it should not be made obligatory.

The entries should not be accepted as conclusive proof, but strong presumption should be drawn.

System of paging and sealing the account books and attestation will cause hardship.

Licensing money-lending should not be introduced.

Inspection of account books is not necessary.

Mr. Kumta.

Keeping accounts is good, but when both the savkars and the debtor are illiterate and the transactions are small, say, Rs. 100, it would be hard to impose the system.

Unless entries are accepted as conclusive unless any fraud or fabrication is proved, the system will not be a success.

Paging and sealing not likely to be successful. Attestation is enough.

The system of issuing licenses is not workable. The law should be so amended as to authorise the Sub-Judge to declare any person found to be unscrupulous or dishonest in his dealings to be unfit to carry on money-lending transactions.

The system of check by Mamlatdars and Assistant Collectors may be tried, though I doubt its practicability and use.

Mr. Parvatikar, Mamlatdar of Dhárwár.

The system may be extended only to literate money-lenders.

The limit of 30 days should be extended to 60.

The entries in duplicate accounts should also be attested by witnesses.

The entries should be accepted as conclusive evidence. It will be a strong measure, but parties will get accustomed to it, and stop the practice of bringing false evidence.

Sealed books not necessary, but printed books may issue at a small cost.

Licensing of money-lenders is not likely to meet with favour.

Mr. S. V. Mensinkai.

The system will be beneficial, but there should be no interference of Government officers.

The accounts should not be treated as conclusive proof.

In short, this system should be introduced experimentally in the four districts to which Chapter IX is already extended.

The system should apply equally to the literate and illiterate.

Mr. Dalal, Sub-Divisional Officer.

The system will be very difficult to work in practice. It will be hard on illiterate men and to those who lend money on a small scale.

The proposal not to admit evidence of payment after thirty days is too rigorous and is likely to place the debtor at the mercy of the savkar.

If the duplicate accounts are made presumptive evidence instead of conclusive proof very little would be gained. Unless it is made conclusive and unless it is made a rule that no suit can be maintained without a copy of the account the system will become a dead letter.

It may be better policy to let the minority who insist on acting against their own interest suffer and guarantee those who act honestly and straightforwardly.

Mr. Namjoshi.

I feel that there are very grave objections to the scheme. The remedy will prove worse than the disease. Small loans are occasionally made by people who

keep no accounts such as shop-keepers, clerks, etc., and it will be hard to close the Courts to them because they keep no accounts. It will go hard with illiterate persons. Even if thumb impressions are taken they will be indistinct and of no use. One month's time is too short. The system will not work well and if the entries are taken as presumptive evidence that will be one step in advance in favour of the savkars. I should think Chapter IX be extended. The words "on demand" may be expunged from sections 65 and 66 and the prosecutions under section 67 be freely instituted. The Revenue authorities may be authorised to make enquiries at the examination of receipts.

If the entries are considered presumptive evidence, books need not be paged and sealed and issued from Government office.

Licensing system is open to objection. To offer temptation to take out licenses (such as partial remission of court-fees or some concessions in regard to the Court procedure) would be a better way. The penalty as suggested in paragraph 14 is to deprive him of a license. This should not be the case. If he commits fraud the ordinary law will suit.

An enduring solution of this socio-economic problem is to be found in universal education, the widest possible extension of Co-operative Credit Societies and encouraging savkars to form joint stock banks.

Rao Saheb Naik, Ranebennur.

The system of duplicate accounts is a good one. The professional money-lenders who already keep accounts will be glad of this system. Middling money-lenders, whose honesty is doubtful, may judge on the score of inability to keep accounts. It is the latter class of savkars who deceive the debtors and their action has brought the savkar class as a whole into disrepute, and the big savkars have stopped their money-lending business. If the keeping of accounts is made compulsory, the big money-lenders will resume their business and the needy will go to them in case of need. Illiterate savkars hire writers to write bonds and they must follow the same procedure when they have to make entries regarding payments.

Making exceptions to the general rule will open a field to take undue advantage.

The accounts should be taken as conclusive evidence.

Books should be issued at a small cost, say, one anna each, which should contain important provisions of the Dekkhan Agriculturists' Relief Act. The fundamental principles of the Act should form part of elementary lessons in school. This will give the agriculturists a clear knowledge of their rights. So the limit of 30 days seems unnecessary (?)

License system is good.

Mr. Narsingrao Desai of Kállápur.

The system of accounts proposed is good. Without an account no suit be maintained and no evidence in variation of the entries should be admitted.

I do not think that any scope be given to agriculturists to challenge the entry once made. So 30 days' limit is not necessary. If there is falsification there is the Criminal Court open. The number of men deceived may not exceed 10 per cent. and why should the other 90 per cent. be given encouragement to resort to false oral evidence.

Accounts should be accepted as conclusive evidence. The agriculturists have grown wiser now-a-days.

The system of accounts should be obligatory on literate as well as on illiterate savkars. If they want to follow the money-lending profession, they must keep accounts to be business like.

No sealed and paged books be issued.

Registration of money-lenders and issuing licenses—I do not think it necessary.

No inspection of accounts necessary.

Mr. G. C. Shannon.

The system is good and should be enforced without exception. The entries should be taken as conclusive proof.

Books sealed and paged should be issued from the Sub-Registrar's office. The Sub-Registrar will explain the importance of the receipt books and the absolute necessity of having entries made promptly. Registering and licensing system would mean a great deal of work.

Rao Saheb Joglekar.

Account system is good, but as there are illiterate savkars it should be made compulsory on the income-tax payers only. The entries should be conclusive except in certain cases.

No sealed or paged books need be issued.

Savkars' accounts should not be subjected to inspection.

G. R. Balekundri.

My own opinion I have already given in detail before the Commission. I still adhere to the opinion then given, that the system of accounts should be introduced. There should be no exception in its application: it should apply both to literate and illiterate savkars. In practice no difficulty will be found to write the entries, when the parties think it obligatory. Schools have increased; there are at least village accountants. The patils are now-a-days in a majority of cases literate and almost every village or its neighbouring village contains one or more literate persons. The cry, in my opinion, of illiteracy as an obstacle is more theoretical than real. The rule that no suit can be entertained without a copy of the accounts is most necessary. This will not, as is feared by some, interfere with petty hand loans. That depends on mutual confidence and there is no reason why that confidence should not continue. It is only when the creditor thinks that he will have ever to go to Court, he will be required to keep accounts. If he does not keep accounts the Courts won't give him relief, that is all. He may recover it privately. If any exception is made, it will be very difficult to differentiate who is and who is not literate. Scope for escape will be open and the scheme must fail.

The entries, I think, should be accepted as conclusive evidence. If necessary, they should be attested by two witnesses at each transaction. If only presumptive value is given to the entries, we cannot stop false evidence being brought as now. The agriculturists may be illiterate, but at any rate they are not idiots. If they affix their signatures *with their eyes open* to the entries containing larger amounts than they actually receive, they are entitled to no sympathy. At any rate such cases will be only so few as can be safely ignored in the interest of the vast majority for whom the system is likely to be beneficial. Savkars will think their profession secure and many who, I have reason to believe, have stopped their business, will resume work and the needy will go to them. If there is deceit or fraud practised on the debtor at the time his signature is taken, the Penal Code is its proper remedy. So I do not think that scope should be given to the debtor to challenge the entry within 30 days, unless it be in a Criminal Court.

I do not think any books paged and *sealed* should issue, but books paged with the broad principles of the Dekkhan Agriculturists' Relief Act printed on the front page may be issued at a nominal price.

I am not in favour of introducing a licensing system nor do I think any check by way of inspection of accounts is necessary. That will be derogatory to the dignity of the money-lending class, and will not produce any appreciable good.

All agree that the system proposed is good and the objections raised are not, in my opinion, such as cannot be met. Every new scheme has objections against it, but experience itself will remove them, and when people get themselves accustomed to it, it should, indeed, prove an excellent boon to all concerned. Honesty will increase, and confidence restored.

G. R. BALEKUNDRI,
Personal Assistant to the Collector of Dhárwár.

Hubli, 12th July 1912.

From—R. P. Bengeri, Esq., retired District Deputy Collector, Hubli;
To—The Collector of Dhárwár.

(1) In reference to your No. 5053 of 4th July 1912 forwarding copy of the Hon. Mr. Arthur's letter No. 54 of 1912 to your address, I have the honour to submit my opinion as follows.

(2) I have but recently deposed to the Commission that the proposed scheme appears unobjectionable to a certain extent and I still adhere to the same opinion. I am not, however, of impression that it would work successfully in all its details or that it would equally apply to one and all money-dealings with agriculturists.

(3) The scheme appears to be this, that a money-lender dealing with an agricultural debtor must keep an account in a prescribed form, must make entry of every transaction therein, and must furnish its duplicate copy to the debtor. This would necessarily facilitate a Civil Court to settle accounts quite easily and would prevent fraud and dishonesty. As a safeguard against fraud or dishonesty it is proposed that each entry should bear attestation or thumb impression as necessity would arise.

(4) India being mainly an agricultural country a majority of its vast population subsist themselves upon pure agriculture and such masses are generally illiterate and their dealings with money-lenders are numerous in one shape or the other. Owing to uncertainty or partial failure of rainfall at least every two years in a cycle of five years agricultural produce is not bumper so as to afford poor peasantry to lay by something for meeting unforeseen or unavoidable contingencies and such peasantry are forced to seek a money-lender's help on many occasions. For marriage and other social or religious matters they have to incur a debt rather on a large scale. Prior to or during trading seasons agriculturists bring loans for maintaining themselves or their cattle from the so-called *dalals* dealing in cotton and grain under a promise of handing over sufficient agricultural produce and such loans are advanced by these *dalals* not on quite regular bonds, but on rough records, promissory notes, or sometimes on credit, in anticipation of receipt of cotton and grains so as to compensate their capital, good interest, and some additional profit to boot. I have noticed these transactions quite numerous when there is a good agricultural prospect. In times of agricultural draught there is urgent need for fodder and grain and petty sums as well as large sums are sought for from savkars.

(5) Large firms and big savkars and traders do keep regular accounts even at present and such accounts are generally accepted in Civil Courts as reliable. Their dealings are generally carried on in important centres. They themselves are literate or they are in a position to engage sufficient clerical agency to write up their accounts. In villages accounts kept by petty money-dealers are either rough tipans or notes and entries are found to have been made

on bonds of loans themselves. There are several other petty illiterate money-lenders who advance small sums to an agriculturist of their credit without any form of record.

(6) In case of its universal application the scheme of accounts proposed for adoption would not, as I apprehend, be successful, because its effect would be very wide and far reaching and petty and illiterate money-dealers upon whom a poor agriculturist depends for timely succour, would find it quite difficult to get a writing agency within his reach and within his confidence as well. It would in my opinion hamper the now smooth working of transactions between a petty illiterate money-lender and his agricultural debtor who deal with each other on mutual credit and good understanding.

(7) In the case of illiterate persons, then, I do not think the adoption of the proposed scheme either advisable or practicable. In the case of literate persons the working of the scheme does not seem to me to be impracticable. An honest man would never demur to its adoption. As long as his dealings are honest he does not care whether he gives one or more copies of his accounts. Savkars of the late Mr. Varad's integrity may be few and his example to middling money-lending classes would not in my opinion be a successful appeal. In lieu of strict honesty and integrity a dominant spirit for making money by means legal or illegal would impel a person to make up false accounts and it is with this class of money-dealers that a legal measure is necessary for imposition.

(8) I cannot say how far the scheme would be successful. The scheme on lines laid down in sections 64, 65, 66 of the Dekkhan Agriculturists' Relief Act in the four Deccan districts and put for operation since long are said to be a dead letter. It is plain that if an agricultural debtor mutely submits to his savkar's exactions as he now actually does by selling his land for false prices, the savkar's forged accounts would not give him any benefit even if he gets up his head later on. The provision that he should get the entries verified within a month or even earlier would not be effective if the entries are made already with his consent and with due caution. A needy person would be made to subject himself to savkar's hard conditions there and then and the latter would not be so careless as to leave entries unentered and take legal consequences upon his shoulders. What I mean is that if a savkar wants to handle his debtor unfairly he would do so immediately and with one stroke, and is not likely to give room to him for complaint.

(9) I would therefore suggest that instead of fixing a particular period for verification of an entry the matter may better be left to the choice of the parties. An intelligent debtor would take all care to have the entry duly made on the spot and if the money-lender does not do it he would not give his signature or thumb impression. Surely, with a precaution that every entry will have a signature or thumb impression in the account both original as well as its duplicate, I see no reason for fixing a particular period for testing an entry. Before giving his signature or thumb impression it is a debtor's duty to see or get it to be seen that the entry either of debit or credit is rightly made. In case of doubt he is at liberty to refuse his signature. If he is so stupid as to connive at all these common-sense rules he does not in my opinion deserve any pity and should be left to suffer the consequences of his folly.

(10) But in cases of disputes of this nature I would not advocate the exclusion of oral evidence. Oral evidence in such disputes seems indispensable in order to arrive at a correct conclusion. It would not, in my opinion, be safe to look to written evidence only. Supposing that an agricultural debtor brings money for repayment, pays it actually to his creditor, that the creditor taking the money refuses to acknowledge it in the book or its counterfeit and refuses to return the counterfeit even, the debtor has no option but to complain, basing his case on oral evidence only. He has no book or record to show what entries have been made or what entries have been omitted. Suppose as well that an agricultural debtor having received the counterfoil refuses to produce it and argues that he did not get it from the money-lender. In such and similar disputes oral evidence appears indispensable.

(11) I am not in favour of imposing an obligation on money-lenders to keep their accounts in forms supplied through Government agency with sealing and paging. The mode and system observable in keeping up accounts by traders

and merchants in the ordinary course of their business are quite methodic. Though they are not sealed they are paged. And interpolation of a page for the sake of forgery, etc., is not difficult to discern. The supply of a printed form through Government agency paged and sealed by Government officers would be an innovation in the public eye and would not be liked by people and would probably be looked upon with suspicion. It is likely to be viewed as a kind of intervention on behalf of Government in the affairs of private persons without gaining a comparative advantage or without doing more good to agriculturists. For as I have said above, it would not be a difficult job for a savkar to make false entry there and then even in such a sealed account.

(12) Likewise, it does not seem advisable to make the proposed account to be conclusive proof. In my opinion and looking to several circumstances necessarily attendant on these transactions between a debtor and a creditor such accounts cannot be conclusive proof in any way. Under an apparent smooth garb it is likely that fraud, forgery or perjury may be found hidden or in store; and if it is to be held conclusive proof, it would harm either party, much more weaker of the two, viz., the agriculturist-debtor. However, there seems no objection to hold it as a strong presumptive evidence.

(13) I do not see any serious evil by an introduction of the system of registration and license of money-lenders, provided they are given the same benefit and advantage which are now given to Co-operative Credit Societies. Without such a gift and a special advantage and protection one would not like to apply for such a license. In order to encourage such licenses the Dekkhan Agriculturists' Relief Act will have to be materially recast in the matter of affording some sort of relief to money-lenders so as to inspire confidence in them to advance freely their money to agriculturists. Already labouring under certain disadvantages by the operation of the Act and viewing an agriculturist-debtor with suspicion and diffidence, I do not consider that a money-lender would dare ask for such a license. An introduction of this system without any material amendment of the Act has, in my opinion, no chance of success and its compulsion would, I fear, impair seriously the position of present money-lenders and would disturb still more the relations between a creditor and debtor.

(14) In fine I am of opinion that the scheme of keeping duplicate accounts may be enforced on literate money-lenders as an experimental measure with an option to others to follow it if they consider it advisable. I do not hold that anything material would be gained by fixing any particular period for a debtor to verify an entry. I do not likewise hold that there is any use of introducing account forms through Government agency. I hold that the accounts under the proposed scheme may be considered as presumptive evidence, but not in any way as conclusive and that oral evidence must have its due weight on behalf of either party. I would vote for the introduction of the system of licensed money-dealers, provided they are given advantages of Co-operative Credit Societies now supported by Government.

Haveri, dated 17th July 1912.

From—Mahadev Ramchandra Nadgir, Esq., Conciliator, Haveri, Taluka Karajgi, District Dhárwár;

To—The Collector of Dhárwár.

With reference to your Honour's No. 5053 of 1912, dated 4th July 1912, I have the honour most humbly to submit my views as follows.

It is no doubt advisable to all parties concerned, whether debtors or creditors, that the keeping of account ought to be made compulsory. But it would some times be a little inconvenient to creditors who are illiterate, if they are according to laws compelled to keep accounts. In such cases the parties and especially the creditor should have by his side always one, who is able to read and write fully. This is not possible in every village. Now the creditor in most of the villages has to come over to another village with his debtor to have a bond written or to get one from another village who could write the document for the debtor. In such

cases the creditor cannot without much inconvenience secure a man who could write his bond and it would equally be inconvenient for him to get a man to keep accounts. Moreover, it cannot be said that every savkar carries on money-lending business to a considerable extent. The so-called savkars who advance a few hundreds to others are many in number. A savkar who has a considerable money-lending business, *i.e.*, at least one who can be assessed with income-tax, can well afford to keep a clerk, and the compulsory keeping of accounts will not be in the least troublesome to him. Only the petty savkars will be put to a lot of trouble if the keeping of accounts is made compulsory. In other words, they would be compelled to leave off money-lending business.

I therefore humbly submit that those savkars whose income can be assessed with income-tax may be compelled according to rules framed to keep accounts and to keep a pass book in accordance with the practice of the late Rao Bahadur Mallapa Varad of Sholápur. The petty savkars may be left free from the operation of the rules.

If the debtor who goes to the petty money-lender suspects any kind of dishonesty in him, he will leave off going to him and would naturally come to the savkars who are within the rules of compulsory accounts. By so doing the petty money-lenders will have to cease of themselves lending money to others.

The rule that without a copy from the entries in the pass book no suit can be filed may be made compulsory, that such pass books shall be kept in duplicate, one remaining with the debtor and the other with the creditor, and that the entries therein shall be conclusive evidence of the matters stated therein.

The pass books may be ruled to be of numbered pages with Government seal.

The registration and license of money-lenders seems undesirable as it is likely to put persons to an amount of trouble.

The pass book being paged and sealed by Government, the further safeguard of the inspection of the books by Government officers is quite unnecessary.

The pass books and copies of entries therein would also be produced when occasion requires in Courts and necessarily inspected by its officers.

These are my humble views on the point.

Dhárwár, 17th July 1912.

From—R. S. Malapur, Esq., Pleader;

To—E. Maconochie, Esq., I.C.S., Collector of Dhárwár.

With reference to your letter No. 5053 of 1912, dated 4th July 1912, I beg humbly to state as follows with reference to the questions raised by the Hon. Mr. S. R. Arthur.

In the first instance I beg to state it should not be supposed that the savkars are dishonest and the agriculturists are honest. There may be a few savkars who do not heed for their position, and they are not respectable people and very few people have dealings with them; but there are other good savkars who generally wish to keep up their position in society and are afraid to set up altogether a false case; but the agriculturist-debtors do not care for any position and I find that they are very ready to state any kind of falsehood and always try to avoid payment even of true debts, especially since the introduction of the Relief Act.

It is no doubt desirable that there should be accounts, but at the same time it must be remembered that all our savkars are not yet literate people, and in my humble opinion it is not good to limit the number of savkars as well. In some cases we find that illiterate savkars of villages are more honest than others and village people like to borrow from such people, and these kind of savkars are not rich enough to engage a clerk to keep accounts. I therefore beg to state that our people have not yet reached that stage when they should be compelled to keep accounts. Since the passing of the Dekkhan Agriculturists' Relief Act

many have already discontinued to lend money and a few others who are now lending money will discontinue their business for the trouble of keeping accounts.

One of the objects of keeping accounts is to ascertain what money really the debtor did pay to the creditor, and I humbly beg to suggest the following means and you will be pleased to consider whether they will in any way produce the desired effect.

Every agriculturist-debtor should pay his creditor only in one of the following modes :—

(*a*) He may send his money by postal money order.

(*b*) He may pay the same to the Taluka Sub-Registrar or the Head Karkun of the Mamlatdar's office.

(*c*) He may also pay the same to the clerks of the Civil Courts.

And these officers will give him a receipt for the same and send the money by money order to the savkar.

(*d*) The agriculturist-debtor may also pay the savkar directly after obtaining a receipt duly signed by him if he has confidence in the savkar.

The agriculturist-debtor must produce these receipts in Court whenever there is a dispute, as it is in his interests to do so.

Neither party should have the least opportunity of adducing oral evidence in respect of payment. I can say that the agriculturist-debtors have become so much wise as to make payments in the way I have suggested.

These are the suggestions which I wish to make.

From—Raghavendra K. Inamati, Esq., of Annigeri of Navalgund Taluka;

To—The Collector of Dhárwár.

With reference to your letter No. 5053 of 1912, dated 4th July 1912, asking me to submit my opinion regarding the suggestions of the Dekkhan Agriculturists' Relief Act Commission, I have the honour to state my opinion as follows.

I entirely agree with the Commission in saying that at present there are not sufficient and reliable means of knowing the history of the transactions between savkar and agriculturist-debtors, and that it is never safe to rely on the one-sided accounts kept by the savkar himself. Nor, on the other hand, is it ever safe to believe as gospel truth the uncorroborated statement of the agriculturist with regard to transactions, without any documentary evidence to support his allegations, and it is perfectly true that the guess work of the Courts in determining an amount in the absence of reliable evidence greatly tends to dishonest evidence forthcoming on both sides. But it is really very hard to find out a proper means to remedy the evil. The suggestions made by the Honourable S. R. Arthur are no doubt a good palliative. But they are not free from the inherent defects, which can only be cured by moral perfection not yet attained to by the people.

The system of duplicate accounts may work well, as it has worked in the case of the late Rao Bahadur Varad of Sholápur. But honest types of savkars like the Rao Bahadur Varad are very rare. The ordinary money-lending class has a good deal of swindling, both with regard to payments made by them to illiterate agriculturists, as also in making up accounts and receiving repayments. Very often the savkar finds his way to mention in the bond of an agriculturist an imaginary sum as paid to him, and sometimes as cash advance, when, as a matter of fact, really no cash advance is made at all, and the bond is taken for interest and principal put together. Sometimes, future interest is also deducted in the payment of consideration mentioned in the bond. All these and similar unconscionable bargains may be checked to a great extent by the system of duplicate accounts. In other words, cases of fraud and misrepresentation on the part of the savkar may be cured to a great extent, but for the case of an agriculturist, literate or illiterate, *voluntarily* passing a bond for double the consideration he actually receives, there seems to be no remedy at all, and the

application of the theory of the survival of the fittest to such a case is, in my opinion, rather hard, and works against the spirit of the Dekkhan Agriculturists' Relief Act. The Act is intended to remove the indebtedness of the agriculturists and after a few years of the application of this Act to any district, the relation between savkar and agriculturist-debtor becomes a good deal strained, and the savkar would refuse to give any loan to an agriculturist-debtor, unless he gets a bond from him for double the amount given to him. Already instances of such bargains are coming up in this district, and it is necessary to find out a means, and it will not do simply to leave the fool of an agriculturist to his follies. Perhaps, it is not even a case of folly, but needy indigence, that submits to the exorbitant terms proposed by the unscrupulous savkar. It is really a great and imminent evil, and in my opinion a proper remedy must be found out early enough. I am unable to suggest any remedy proper enough for this purpose.

With regard to the compulsory keeping of duplicate accounts, I may suggest that when an illiterate agriculturist is concerned, the thumb impression must be taken in the presence of at least two witnesses. This is found necessary, as there is a fear of the savkar cheating the debtor who is illiterate. Even the Postal Departments do require the attestation of two witnesses to attest the thumb impression of an illiterate person, when a money-order amount is to be given to him, and I may also suggest that books or indenture forms sealed with the seal of the Collector are necessary to effectually safeguard the interest of the agriculturist.

With regard to the periodical checking of accounts by Mamlatdars and Assistant Collectors during their tour, their inspection after all will be most cursory, and with the heavy strain of Revenue and Magisterial work, I do not think that they can devote time to look through all the accounts of the villages under their charge. I may, however, suggest the appointment of some well-meaning honorary persons to inspect periodically all the accounts of a group of villages, like the Honorary Organisers of the Co-operative Credit Societies.

The proposal in question does not say to what authorities an agriculturist may complain in case he finds within 30 days the misconduct of the savkar with him. I may suggest that the nearest Magistrate or Sub-Judge would be the most competent person to be approached in this matter.

Lastly, with regard to the licenses being issued to savkars, to check the unscrupulous savkar flourishing, I may state that all money-lenders should be required to take out licenses, but that there should be no charge for taking out licenses at all, and if they misbehave in any instances, their licenses should be cancelled, and they should not get afterwards any licenses at all.

Hoping that my suggestions will be noted and thanking you for this kind consultation.

Camp Nagsamudra, 16th—19th July 1912.

From—R. V. Padbidri, Esq., B.A., Mamlatdar, Gadag;

To—The Collector of Dhárwár.

Subject—Proposal of keeping duplicate accounts and pass books—Dekkhan Agriculturists' Relief Act.

I have the honour to reply to your No. 5053 of 4th instant regarding certain proposals of the Hon. Mr. S. R. Arthur, on Special Duty, of keeping accounts by the money-lenders and the agriculturist-borrowers, respectively.

2. I understand from the above-quoted letter that the need for such accounts has arisen from the fact that sections 64, 65 and 66 that already exist in this matter, have become more or less a dead letter. Before adopting any new system to meet this evil, I submit, we should first see if we cannot take any steps to compel the parties to observe these provisions already existing. If we can, we should take these steps rather than have a new system to check the evil arising from their non-observance. If we cannot, we may find out a new system, provided it can check the existing evil.

3. The question that we have first to see then is, can we compel the parties to observe the requirements of sections 64, 65 and 66 invariably? Section 67 makes non-observance of these, penal. But I gather from the Hon. Mr. Arthur's letter that it is one party that has to prosecute the other, which is scarcely done. If the Sub-Judge cannot *suo motu* punish the party who infringes the provisions of any of these sections, I think he must be given power by law to do it and at the same time to reject any suits that come to him that do not fulfil *any* of the provisions mentioned in these three sections. The words "on demand" in sections 65 and 66 should be deleted and giving the statement and accounts must be made obligatory on the money-lender, if not the whole when a second payment is made, at least of so much as relates to the debt subsequent to previous payment. If this be done and the Sub-Judge is strict with regard to prosecuting the delinquents there is no reason why very soon people will not come to see they must first observe the requirements of these two sections before going to Court. These sections then will, of course, have to be extended to all districts to which the Act applies. In my humble opinion this will be more effective than the proposed duplicate accounts (paragraph 5 of the Hon. Mr. Arthur's letter). For, the keeping of these accounts seems to me to have some difficulties not easy of solution, which the Hon. Mr. Arthur seems to anticipate. The debtor ryot generally in this district at any rate is still no match to the wily money-lender, especially so in the villages. There are of course a few who can overreach the money-lender in his tactics, but their number is not large. It is only when he has to repay the loan that by associating himself with some busy body in the Táluka town, some tout, mokhtyar or a vakil who is not particularly scrupulous in his profession that he turns out a sneak. Such being the case generally it is not impossible for the money-lender to make false entries of payment of the loan or repayment of the same, when the agriculturist-debtor is quite illiterate, as compared with him and neither know to make the thumb impression properly. An unscrupulous money-lender might well do it himself and contend later on that the debtor did not do it properly. In short I honestly think that so long as our agriculturist-debtor is illiterate the adoption of system of duplicate accounts will leave room to the money-lender to do more harm than now to the illiterate debtor and litigation will instead of becoming less grow more and become complicated, as this will be a case of documentary evidence. Any system which wants only the illiterate debtor and the literate lender to fulfil its conditions will, I am afraid, be necessarily so. Just as section 10-A has enabled the debtor to be sneaky this system of duplicate accounts will, I am afraid, make the savkar more dishonest than now. It may be said then why not have an attesting witness for payment. I should have readily said the village officers should attest such payments. But I am afraid that this will only give room for them for peculation, either from the savkar money-lender or the agriculturist-debtor. All things considered I beg to repeat what I have said above that so long as our agriculturist-debtor remains in a state of illiteracy, as at present, the system of duplicate accounts will not remove the evil it is intended for, but may become a dangerous weapon in the hands of unscrupulous money-lenders. It may be said that this system will protect honest money-lenders if it cannot redeem the dishonest wily money-lenders. But I believe I am not wrong in saying that the number of the former when compared with the latter would be very small. A measure to do them good and help the majority of unscrupulous money-lenders in their nefarious practices will not commend itself to be adopted.

4. I understand from the Hon. Mr. Arthur's letter that the system has been tried successfully in Bhávnagar. It may be tried as an experiment for five years though I hesitate to say it will do much good. It is my honest opinion that proposals in paragraph 3 above may work better than this system of duplicate accounts now proposed.

5. Even if duplicate accounts are to be adopted, I submit their production should not be made conclusive evidence but only a presumption to be rebutted.

6. The accounts, if it is decided to have them, should be in books sealed by the Sub-Judge or Mamlatdar.

7. The books can advantageously be examined by the Mamlatdar and Assistant or District Deputy Collector while on tour. But they must have a list

of such money-lenders on hand. Their time is too full to go in search of them in the villages.

8. The proposal to register money-lenders (paragraph 14) is indeed a good one. But there are many who though not professionals lend to friends on emergencies small sums. Friends of mine have on some emergencies done so. The registration will do away with such loans, as no one would like to lend out money minimising the chances of recovery by this registration business. In short, the registration will make money-lending a pure business and profession and come in the way of certain moral obligations between friends in cases of emergency. On this principle that it may demoralise friendly loans in cases of emergencies it may be objected. But we have to choose "the lesser of the two evils" and probably on that utilitarian principle this proposal would seem a good one. It will also lessen the chances of a loan "oft lose both itself and friend".

9. Lastly as regards the proposal of pass books adopted by the late Rao Bahadur Varad, I submit this has the same objections as in the case of duplicate accounts proposed. Rao Bahadur Varad was, I know personally, a shrewd business man of unquestionable reputation. His word was fully trusted even without such entry in accounts. But we have unfortunately few people like him in the world now. If the money-lender be a person who is not particularly scrupulous in his dealings and the debtor as in this district generally is illiterate would not the consequences of having such pass books be disastrous, as the former can make any entry he likes in them? I should think so. For this district and at this time I certainly would not recommend the adoption of these books.

10. I can suggest no other remedy by which genuine amounts of loans made and repaid can be easily ascertained. I hesitate to say whether every entry in the savkar's accounts should have the attestation of the village patil, one panch on behalf of the savkar and one on behalf of the debtor, will remove the present difficulty, as this would mean so much bother to both to get these people. Both will be at their mercy for making any payment or repayment and who can say that they will not demand hush-money for it?

Nargund, dated the 20th July 1912.

From—Shivaji Ramchandra Betigeri, Esq., Honorary Organizer, Co-operative Credit Society, Dhárwár District;

To—E. Maconochie, Esq., Collector of Dhárwár.

With reference to your endorsement No. 5053 of 4th instant, below copy of the letter No. 54 of the 3rd instant from the Honourable S. R. Arthur, Esq., on special duty, I have the honour to submit my views on the subject of introducing the system of keeping accounts, etc., under Chapter IX of the Dekkhan Agriculturists' Relief Act.

(1) I entirely agree with the views of the commission regarding the lot of mischief that is often practised by the dishonest money-lenders in their dealings with ignorant agriculturists.

(2) I further think that it is high time to introduce such measure to put a stop to the dishonest practices of these money-lenders. I, therefore, gladly welcome and approve of the suggestion of making the system of keeping accounts according to Chapter IX of the Dekkhan Agriculturists' Relief Act compulsory with certain modifications.

(3) I humbly venture to suggest that it would be a great hardship to compel every so-called money-lender to keep accounts according to Chapter IX. For the majority of money-lenders in the villages are themselves agriculturists who do the business of small money-lending to brother agriculturists in times of need. In the case of such illiterate agriculturist money-lenders making the system of keeping accounts compulsory would be to deter them from helping their poor agriculturist friends in times of want. I, therefore, suggest that in the case of money-lenders whose dealings do not exceed over Rs. 2,000 (two thousand), keeping of accounts according to Chapter IX should not be made obligatory.

(4) On the point whether the entries in the accounts should be accepted as conclusive evidence I should like to suggest that it should not be treated as conclusive, but a strong piece of presumptive evidence only. Otherwise in the case of accidental or negligent omissions no scope for evidence of honest payment would be open.

(5) The system of paging, sealing of books of account or even of attestation of such entries would entail a great hardship on the part of the creditor. I, therefore, do not think it necessary to introduce such a system.

(6) Further, I do not think it well to introduce a system of registration and license of money-lenders. Such an introduction would put a stop to money-lending. For there is a class of money-lenders who do not like to be known to the world as professional money-lenders. They would think it an ignominy to be known by the name of savkars.

(7) I am further of opinion that an inspection of rayats' accounts with savkars by the Revenue authorities is not necessary.

Hubli, dated the 23rd July 1912.

From—The Mamlatdar, Taluka Hubli;

To—The Collector of Dhárwár.

Your No. 5053, dated the 4th instant.

Subject.—System of accounts of debts of Agriculturists.

I have the honour to report that money-lenders are generally opposed to keeping duplicate accounts. They think that it will not be possible for them to keep such accounts. My own views are given below.

2. *Paragraph 4.*—It is quite true that, under the present state of things, there is an attempt on the part of money-lenders and the debtor to bring forth false evidence and that the more unscrupulous man succeeds. Honest money-lenders are giving up money-lending business generally, especially with poor agriculturists.

3. *Paragraph 5.*—The system proposed is an excellent one and is worth trial; but I am humbly of opinion that it will be hard to enforce it in all cases. In the case of professional money-lenders who even now keep accounts, it may be enforced without difficulty. When the money-lender and the agriculturist are both literate, there will be no difficulty. When the money-lender is literate and the debtor is illiterate it may be enforced; but there will be some difficulty in taking the thumb impressions of illiterate debtors. Unless thumb impressions are taken by trained men, they are quite worthless as such, and there is a chance of fraud. I think that such thumb impressions should be attested by at least one respectable witness and that the thumb impressions should be taken by village officers who should be supplied with pad and ink for the purpose. When both the money-lender and the debtor are illiterate and the transactions are small, say, under Rs. 100, I think that it would be hard to enforce the system.

4. The observations made in paragraphs 6 and 9 are undoubtedly correct.

5. *Paragraph 10.*—Subject to the restrictions I have suggested in paragraph 3 above, I am humbly of opinion that if the system is to be introduced, there is no chance of success, unless the duplicate accounts are accepted as conclusive evidence, unless any fraud or fabrication is proved. The last query I have answered in paragraph 3.

6. *Paragraph 13.*—The idea of keeping the accounts in books paged and sealed is not workable in practice. Even in Taluka office, the Mamlatdar and the Head Karkun do not find time to see to the paging and sealing of the numerous registers of the Taluka and villages, and the naik is generally entrusted with the work. I think that the attestation of entries would be sufficient.

7. *Paragraph 14.*—I am humbly of opinion that the system of issuing licenses to money-lenders is not workable. It is likely to throw the agriculturist at the mercy of a selected few who will then be dictators. It will besides throw much work on the officers authorized to issue such licenses. I would respectfully suggest that a section may be inserted in the Act authorizing the Sub-Judge to declare any person found to be unscrupulous or dishonest in his dealing to be unfit to carry on money-lending transactions. This, I think, will serve as a sufficient deterrent. With a view to protect the money-lenders from loss, I humbly propose that the rate of interest to be allowed may not be less than Rs. 9, unless the money-lender has advanced money at a lower rate of interest, and should not be more than Rs. 12, and the number of instalments to be allowed for repayment should not exceed 12, and the amount of instalment should not be less than Rs. 25. This, in my humble opinion, would be fair to both parties.

8. The system of check by Mamlatdars and Assistant Collectors along with the examination of rayats' receipt books may be tried. I am however doubtful of its practicability and use, as many of the borrowers will not like to admit their indebtedness so long as they can avoid it.

Dhárwár, dated the 23rd July 1912.

From—The Mamlatdar of Dhárwár ;

To—The Collector of Dhárwár.

Subject.—Introduction of a system of accounts to be kept by money-lenders when dealing with their agricultural clients.

With reference to your endorsement No. 5053, dated 4th instant, forwarding for opinion copy of a letter dated 3rd idem from the Honourable Mr. S. R. Arthur, on special duty regarding the subject marginally noted, I have the honour to observe as follows :—

In the case of big and literate money-lenders the system I think will work well and prove beneficial to both the parties. Big and literate money-lenders are few and the agriculturists in villages who usually have recourse to petty money-lenders in villages will be practically debarred from approaching them. The petty money-lenders will scarcely find it a paying concern, after defraying the expenses of keeping an elaborate account intended by the proposed system, to continue the money-lending business. The natural consequence will be I think a reduction in the number of money-lenders, and the facilities for getting loans will be curtailed. It will therefore be necessary in the first instance at least to extend the system to the literate money-lenders only.

The limit of 30 days proposed in paragraph 5 of the letter for producing evidence of payment in cash or kind appears rather short. The agriculturists, for whose benefit the system is chiefly intended, are usually lazy, and during a certain portion of the year too busy to get the entries in the duplicate account book verified within the period prescribed. The limit I submit should be extended to 60 days as a trial measure.

The entries in the duplicate accounts it is proposed to be attested by the signatures or thumb impressions of both the parties. This is of course necessary. But I would even go the length of having the entries also attested by one or two witnesses known to the parties. This will afford an additional safeguard against possible loss of duplicate account book with the agriculturists and forgery in the savkar s book. The attestation of the accounts by the parties should be taken, I propose, as conclusive evidence. The measure will no doubt be a strong one in the beginning. The parties will soon get accustomed to it, and the measure will stop a loophole for bringing a mass of false oral evidence.

The attestation of entries by the parties, I submit, is a sufficient safeguard. The issue of sealed books by Government offices seems unnecessary for the safety of parties. But the issue of printed books in prescribed form would secure promptness and regularity as also neatness and exclusion of unnecessary matters. I would therefore advocate the printing and supply of such books by Government at a small cost.

Licensing of money-lenders is not likely to be met with favour. Money-lending is done mostly by respectable persons. These I am afraid will think it derogatory to their respectability to get a license before doing the money-lending and stop money-lending to agriculturists. It is of the utmost importance I think to encourage respectable and honest people to continue money-lending in he interest of the agriculturists.

Dhárwár, dated the 23rd July 1912.

From—S. V. Mensinkai, Esq., Retired Deputy Collector, Dhárwár;

To—The Collector of Dhárwár.

With reference to your endorsement No. 5053, dated 4th instant, I beg respectfully to express my views on the matter relating to the system of duplicate accounts.

2. As the intention of enforcing such system is to maintain honest dealings between the creditor and the debtor and to free the Court of law from the necessity of taking the mass of false evidence, I think that such a system will be beneficial to both classes.

3. But under the existing provisions of the Dekkhan Agriculturists' Relief Act the creditor's position as a money-lender is very unsafe. He cannot have his principal with reasonable rate of interest soon recovered in a Court of law. The creditor shall have to wait for a number of years to get his principal amount back, inasmuch as even this amount is invariably made payable by small instalments. It may be argued that whenever the amount is made payable by instalments future interest is generally allowed; but the rate of interest that is generally allowed is very low. By the money being made payable by instalments the creditor is put to a double loss; for he loses not only the rate of interest agreed between the parties on the principal amount by the time he gets it back but he is also deprived of the interest on the interest money to which he is annually entitled, and so in such a case there will be no profits to a money-lender compared to what he would get if the money be invested in some other branch. Under these circumstances I think that unless and until the repayments of debts are well secured in a Court of law there will be no inducement to the honest savkars to take up the business of lending money to agriculturists. Honest money-lenders can get reasonable rate of interest (12 per cent.) by lending their money to traders and there will be such a demand for their money at all times. It is quite natural that an honest man will not take up a business merely from a benevolent motive unless it be a paying one. And so it is quite essential to maintain a system that would induce both classes of persons to be honest by amending the present provisions in the Act. Among the various provisions of Dekkhan Agriculturists' Relief Act that are favourable to debtors, those of Section 10-A are most ruinous to creditors. It is a fact that land price is every year increasing since the introduction of the Survey Settlements. Section 10-A can be made applicable even to sale transactions that took place long before the introduction of the Dekkhan Agriculturists' Relief Act. The seller in such a case tries to show that the sale transaction was really a mortgage by applying the principle of inadequate consideration, and he tries by such false evidence to impeach even the genuine sale transaction that took place before the application of the Dekkhan Agriculturists' Relief Act, and he finds it very easy to drag the real honest purchaser into a Court of law as he has to pay no penalty by way of court-fees in such cases. Sometimes the real honest purchaser is totally ruined when the writer of the sale-deed and the attesting witnesses make a common cause of benefitting themselves by getting the real sale transaction proved as one of mortgage. This class of cases is increasing day by day which circumstance has made the honest savkars feel that even their real dealings with agriculturist-debtors are fraught with danger. The litigation would also be endless. But for the passing of this Dekkhan Agriculturists' Relief Act such class of false cases would not have cropped up. It is but equitable that section 10-A should therefore be repealed at once.

4. In this connection I may be permitted to note that the provisions of the Dekkhan Agriculturists' Relief Act should be made applicable only to the *bona-fide*

agriculturists, that is, those who maintain themselves solely by agriculture and whose income ranges from five to six hundred rupees a year, for it is only such agriculturists that mostly need protection because of their indigent circumstances. Big land-holders are generally wise enough to protect their landed estate somehow or other. Under the Act even those that have sufficient means of income by other profession can be treated as agriculturists simply because their income from agricultural profession is greater than that from other profession though they may not be *bona-fide* agriculturists.

5. In favouring the system of duplicate accounts I think it advisable that there should be no interference of the Government officers to authorize the dealings of the savkars with the agriculturist-debtors by issuing licenses, etc.

6. It would be advisable that such accounts should not be treated as a conclusive proof, but should be looked upon as a strong presumptive evidence only, as it is going against the broad principle of law to give to such a transaction the sanctity of conclusive proof, and as such transactions can take place among any class of society and at any place which can give a broad way to fraud.

7. In conclusion I am of opinion that this system should be introduced as an experimental measure in the four districts to which the IX Chapter has already been made applicable, but that no evidence should be accepted in variation of the accounts as the agriculturists will soon learn to insist upon entries being made therein. I would also add that the system should be made obligatory on all money-lenders whether literate or illiterate. There is another point of importance which I consider as necessary to touch here. The effect of the provisions of the Dekkhan Agriculturists' Relief Act as now administered has been to protect the interests of the agriculturists at the sacrifice of those of the money-lenders. Small land-holders cannot do without incurring debts at times. They must go either to a money-lender or to a Co-operative Society for help in such cases. They cannot borrow any money from Government for any purpose unconnected with agriculture. According to the time-honoured customs they have to perform certain ceremonies such as marriages, betrothals and so forth, though on a poor scale. It may be noted here that they cannot avoid expenses which they have to incur on this account. In the event of the outturn of their crops being poor they have to suffer. At each step they are required to borrow money. It is true that they are often reckless but in most cases their circumstances force them to this course. How to make them avert such expenses is a question very difficult of solution. It does not appear fair that the money-lenders who help them in times of need should be made to suffer because of the recklessness of such agriculturists or of other circumstances which make them borrow money. It may be argued that there are instances of money-lenders being dishonest, but I submit that such fact cannot be made a ground for suspecting the honesty of the money-lenders as a class. If the object of the Act is only to guard the interests of the agriculturists, it would be advisable to enact in the interests of the money-lenders that if any money-lender lends money to an agriculturist he does so at his own risk.

Camp Motebannur, dated the 23rd July 1912.

From—A. R. Dalal, Esq., I.C.S., Assistant Collector, Second Division, Dhárwár;

To—The Collector of Dhárwár.

With reference to your No. 5053 of 4th July 1912, I have the honour to state that in my humble opinion the proposed system of accounts will be very difficult to work in practice.

There are difficulties from both the creditors' and debtors' points of view.

There are many money-lenders (in a small way of business) who are quite illiterate. Besides professional money-lenders, many traders and others who have a little cash to spare go in for money-lending. Sometimes even women do money-lending business. Most of such people are, as a rule, illiterate. They do business in a small way so that they cannot afford to keep a karkun to look after their accounts.

It may perhaps be urged that illiterate money-lenders of this type are not wanted, but their place in the economy of small villages will be hard to fill.

From the debtors' point of view the objections of illiteracy, etc., apply of course with much greater force.

The Honourable Mr. Arthur considers the objection that the rayat who wants money will attach his thumb impression to entries of double the amount as readily as he now makes a similar admission before a Sub-Registrar but meets it by pointing out that it is no use maintaining the present system which puts a premium on dishonesty in a vain attempt to protect the fool from the results of his folly. It may however respectfully be urged that the main object of the Dekkhan Agriculturists' Relief Act is to try and protect those who cannot protect themselves.

The debtor who is smart enough to see that all the entries in the accounts are properly posted and signed will be smart enough to protect his own interests without the help of any system of accounts prescribed by law. On the other hand the needy, illiterate and impecunious borrower who is willing to sign anything and swear to anything so long as he gets his loan will be in a much worse position than now as evidence in variation of entries attested by him will not be admissible.

In passing it may be noted that entries in the accounts are to be attested by thumb impressions when the parties are illiterate. Thumb impressions except when taken by trained men (as in Sub-Registrars' offices) are of no practical use for purposes of identification. Those taken by private parties are, as a rule, mere dabs made by the thumb with common ink. If the entries attested by thumb impressions are to be conclusive evidence every money-lender or his clerk will have to learn the art of taking thumb impressions properly.

This is a minor and not insuperable difficulty, but it may be worth considering.

The proposal not to admit any evidence of payment in cash or kind by client to money lender after 30 days from the alleged payment is too rigorous and would place poor and ignorant borrowers at the mercy of a savkar provided the latter is wily and unscrupulous enough.

If the duplicate accounts are made presumptive evidence instead of conclusive proof as suggested in paragraph 10, very little would be gained. It is stated in paragraph 2 of Mr. Arthur's letter that the provisions of sections 64, 65 and 66 have become practically a dead letter in the Districts in which they have been in force. If the maintenance of the accounts is not made compulsory, so that no plaint could be maintained without an entry from the account, and if the accounts are to be made presumptive evidence only, the chances are that the whole system will remain a dead letter as in the case of the above-mentioned provisions of the Dekkhan Agriculturists' Relief Act.

As regards the contention in paragraph 11 that it may be better policy to let the minority who insist on acting against their own interest suffer and to guarantee those who act honestly and straightforwardly, it may be humbly asserted that those who are likely to suffer will not be a negligible minority, but perhaps *the majority of those whom it is the object of the Dekkhan Agriculturists' Relief Act to protect.*

As for the success met with by the late R. B. Warad of Sholápur in this method of keeping accounts, it may be remarked that in such cases there is nothing to prevent it by being successful. A proper system of accounts is a necessity for a savkar with extensive dealings. When a savkar is honest and straightforward and does not seek to take advantage of the poverty or ignorance of his clients such accounts are likely to be of great benefit to both the savkar and his clients.

It is only when the savkar is not honest and straightforward that the system is likely to be abused, and it is precisely as a check to the dishonest creditors and borrowers and not the honest ones that any reforms are designed. If in place of R. B. Warad we substitute an indefinite number of savkars with capitals

ranging from lakhs to a few hundreds and with principles and scruples ranging from highest to nil and if we make the entries in their accounts conclusive evidence in law, it is very probable that the results will be far from successful.

Dhárwár, dated the 24th July 1912.

From—V. K. Namjoshi, Esq., B.A., District Deputy Collector, Third Division, Dhárwár;

To—The Collector of Dhárwár.

Subject.—Duplicate accounts (Dekkhan Agriculturists' Relief Act).

I have the honour to submit the following remarks with reference to your No. 5053, dated 4th instant, on the subject noted above.

2. I must confess that I feel that there are very grave objections to the scheme suggested in the Honourable Mr. Arthur's paragraph 5. The remedy, I fear, will prove worse than the disease, in this district at any rate. I shall point out some of the difficulties which, I think, are sure to arise in actual practice if the scheme is enforced. Small loans are occasionally made by people, who generally do no money-lending business, to shop-keepers, clerks, etc., who are generally taken to be non-agriculturists. Is the protection of the Courts to be denied to lenders in such cases when it turns out that the borrowers are agriculturists, as they often are, and try to make themselves out to be, simply because no accounts are kept? Money transactions occasionally take place in villages between agriculturists themselves who are generally illiterate and naturally no written account of the loan is kept, but the transaction is registered in the memory of a few village elders. Would it not be interfering too much with the social economy of the villages to require that duplicate accounts should be maintained in such cases on pain of forfeiture of the assistance of Civil Courts? A borrower, who under the existing system would have the courtesy to admit the taking of a loan knowing that it may be proved by oral evidence, might be tempted to deny having taken it knowing it for certain that the lender would receive no countenance from the Civil Courts in default of duplicate accounts. Again, is it fair that the agriculturist-debtor (generally illiterate) should be prevented from proving payment to his non-agriculturist money-lender otherwise than by means of these duplicate accounts (the writing of which remains at the mercy of the literate savkar) after the expiry of one short month, when his non-agriculturist brother can do so at any time, and when even a recital contained in a written and registered deed showing receipt of consideration can be proved not to be true by means of other evidence? Is this not putting a premium on dishonesty at the expense of people who are known to be unable to protect themselves? The question has been asked [paragraph 8 (ii) of the Honourable Mr. Arthur's letter] whether the average cultivator will insist on entries of repayment being made in all cases when the new system is *made known to him*. Now the provisions of Chapter IX of the Dekkhan Agriculturists' Relief Act have been in force in the four Deccan Districts for over a generation, and I know it used to be the practice in the Ahmednagar District to explain these provisions to the village officers and rayats who assemble at the time of Jamabandi. Do the agriculturists of that District *know* these provisions, and, knowing, take action against their savkars under the authority of these provisions? The answer is furnished by paragraph 2 of the Honourable Mr. Arthur's letter. The fact is that agriculturists recognize that the savkar is a very necessary evil, specially in times of scarcity when he accommodates them with loans for maintenance and will do anything to keep on the right side of the savkar. Will the type of man (an agriculturist) who complacently puts his mark to a document evidencing receipt of, say, Rs. 200, when he has actually received Rs. 100 or less, *really insist* on entries of repayment being made in all cases by his *savkar*? To say he will is really to argue the superfluity of this special legislation in his behalf or of this special means of protection designed for his benefit. A month passes so quickly specially when the agriculturist is engaged in his harvesting operations (and that is just the time when repayments would be made to the savkar) and a dishonest savkar will find it so easy to elude his debtor for a month or so by holding out promises of writing up the account book.

The month passes away, there is no entry in the account book and the repayment is as good as not made! Again, how is it to be ensured that the thumb-impressions will be taken sufficiently clearly for future identification in case of necessity? It is quite conceivable that a dishonest savkar will make some kind of thumb marks to false entries in the duplicate accounts and make them sufficiently indistinct (mere smudges) to escape detection.

3. I hope I have said enough to show that it would be extremely undesirable and difficult to introduce the system as explained in paragraph 5 of the Honourable Mr. Arthur's letter. The last question raised in paragraph 10 of that letter itself shows the great difficulty of working the system, and I am very respectfully of opinion that it would be one step in advance to make such duplicate accounts only presumptive evidence. This measure will also ensure to a certain extent the benefits claimed for the more stringent system of making these accounts conclusive proof of the entries. When such accounts are considered presumptive evidence many savkars will begin to keep them, and that will be one point gained.

4. It would also appear that the provisions of Chapter IX are not made use of to the extent they should be. With the attention of all officers concerned pointedly drawn to the matter (and the Dekkhan Agriculturists' Relief Act Commission has done a great service in this connection) and with the extension of that chapter to all districts, some advance in the direction desired might be expected. It would seem to be better to get use made of the provisions of the law that already exist than introduce provisions of greater stringency which in their operation may conceivably cause harm to the parties sought to be protected by them. The words "on demand" might, if considered advisable, be deleted from sections 65 and 66 of the Act, and if prosecutions under section 67 are freely instituted for sometime, a wholesome impression will be left on the minds of the savkars. Revenue officers might be asked to make enquiries when doing *Kul-rujwat* or inspecting the Record of Rights in the chavdi as to whether the provisions of this chapter are being followed and to take immediate action on the complaints of agriculturist-debtors about non-compliance with those provisions. This is the only action I would recommend in respect of paragraph 15 of the Honourable Mr. Arthur's letter. Any further imposition of work on the Revenue officers who have their hands quite full already would be undesirable.

5. As regards the form of accounts kept by the late Rao Bahadur of Warad (savkars of whose type are alas! too rare) and the system said to be in force in Bhávnagar, the system of account is unquestionably very good, but it would be interesting to know if such duplicate accounts are considered conclusive evidence in that State, and that is really the most important point to consider.

6. *Paragraph 13 of the letter.*—As it has been suggested that the accounts may be considered presumptive evidence, it does not appear necessary to insist on the books being paged and sealed and issued from any Government office.

7. As regards the question of registration and licenses raised in paragraph 14, I am afraid it is again open to the charge of too much interference with the economy of rural life. A better way perhaps would be to offer some temptation to savkars to take out licenses (such as partial remission of the court-fees or some conveniences in regard to court-procedure) and to make it a condition of the grant of a license that all accounts will be kept in the manner stated in paragraph 5 and that thumb impression apparatus will be kept and impressions neatly and distinctly taken. The revocation of a license in the manner suggested in paragraph 14 would be depriving a man of his means of livelihood. If a savkar commits fraud, the ordinary law will take care of him without his being deprived of the means of livelihood. The cancellation of a license given as above suggested would only deprive the savkar of some special concessions only and a knowledge of the fact of cancellation will indirectly reduce his clientele. The remedies suggested do not go to the root of the matter. An enduring solution of this difficult socio-economic problem is, I think, to be found in universal education, the widest possible extension of Co-operative Credit Societies and encouraging savkars to form joint-stock Banks. But these solutions are of course foreign to the matter immediately under enquiry.

Ranebennur, dated the 24th July 1912.

From—Rao Saheb Venkatesh Shrinivas Naik, Conciliator, Ranebennur;

To—The Collector of Dhárwár.

With reference to your memorandum No. 5053, dated 4th July 1912, I have the honour to append herewith my humble views on the subject of accounts so kindly referred to me, and in doing so I beg to thank you most sincerely for giving me an occasion to express my views on so important a subject concerning the welfare of the country.

With my most humble and dutiful respects.

(1) Chapter IX of the Dekkhan Agriculturists' Relief Act deals of receipts, annual statement of accounts and making up the accounts in a pass book from time to time in reference to transactions in which an agriculturist is a party. The chapter though it is in force in the four original Districts to which the Act was first applied has been reported to be a dead letter in spite of the stress laid by Government and efforts of the sub-judges year after year for its enforcement. The provisions of the chapter require all these procedures, two of them are operative only on demand of the agriculturist and the third though obligatory in all cases is said to have been ignored by savkars, because the party for whose protection it is meant seldom or never brings any complaint. As long as the agricultural classes are not educated and do not understand the provisions of the Dekkhan Agriculturists' Relief Act, which is meant for their protection, it is not possible to remedy this. Though it is more than 25 years since the Act was first introduced in the four districts, the agriculturists have not understood their rights properly. Any amount of enforcements and obligations made on the part of the savkars are sure to be as dead a letter as the present chapter or section 64 which is now obligatory in all cases. It is no use making the provisions of the Act strict and allow them to remain without any operation.

(2) The system of keeping accounts in duplicate as suggested by the Commission is indeed a good one inasmuch as it facilitates the Courts to arrive at correct history of the transactions between the parties and encourages honesty both of the savkar and his agriculturist client, which is the main object of the Act. It is to be considered whether it is practicable to keep such accounts in all cases and whether it is advisable to make any exceptions to it. Professional money-lenders who regularly keep the account will be very glad to adopt the system though it requires them to keep some more account books and make entries in them. This additional labour on the part of the savkar is amply repaid by the assurance he has of the Civil Courts, if at all he goes there, not cutting the amount due to him in either making the accounts or taking the history of the transactions. Honest money-lenders are very willing to abide by any mode of keeping accounts if they are guaranteed the repayment of their principal and reasonable interest on it. Money-lenders on smaller scale who do not regularly keep the accounts and in whose case it is very difficult for the Court to arrive at any definite conclusion about the amount due to him by his debtor may perhaps grudge against keeping such system of accounts, on the score of inability to do the same. It is only these money-lenders who do not keep accounts have made the position of all savkars insecure by their unscrupulous transactions. As they expect to gain profit by their dealings in the form of interest, etc., they should not as a matter of fact grudge for keeping the accounts; they can very well afford to engage persons to keep the same for them if they or any members of their family are unable to keep them.

It is a fact that there is a probability of the man who is in need of money will not hesitate to attach his thumb mark to entries of double the amount he receives, as readily as he admits now before the Sub-Registrar. This state of things, *viz.*, getting bonds executed for more money than actually advanced to the agriculturists, has been in vogue only with unscrupulous savkars since the time of the introduction of the Act and for the reason that they will have to receive in the Court decrees for much less amount than actually advanced to them. Since the advent of the Act honest money-lenders have left out money-lending to rayats for fear of losing their amount and for the fact that they are not willing to follow their brethren in the unscrupulous way of getting bonds executed and accounts kept. When they see that with this mode of keeping

accounts they do not lose anything they will be more induced to resume their honest dealings and the average rayats will go more to such money-lenders than to unscrupulous savkars of the present day and the fear of getting confessions to more amounts than actually advanced to them will gradually diminish. It rather goes hard to the illiterate money-lenders to keep this system of accounts. Now for getting the bonds written, etc., they will have to hire a writer and they should do the same for accounts also.

(3) A man who lends money though illiterate very well understands that he should have a bond for the amount advanced and should go to the Court if the amount is not repaid in time. One who knows so much will after a short time know also that keeping account is a part of transaction and will engage some one to do the same for him though it costs him a little. Making exceptions to the general rule will open a field to the unscrupulous money-lenders to take undue advantage of it and deceive their constituents.

(4) When so many restrictions are laid out for keeping the accounts I do not see any reason why they should not be treated as conclusive evidence in the Courts. When the account books from both the sides are produced and all the entries in them are properly made and attested, there will be no reason to the Court to disbelieve them, and decide the case contrary to what appears in the pass book. But in the case in which one of the parties fail to produce the accounts and pass book it will be a question for the Court if they should rely on what is before them. The money-lender who has generally a suit to make and claim money cannot but produce the pass book and accounts, and the agriculturist for whose interest all these precautions are taken cannot hold back the pass books unless he has an intention to deceive his creditor, in which case the Court will do well to punish him for either his negligence or fraud. The agriculturists generally are very careful in keeping the papers regarding their transactions with the savkar, as recently bonds of very old dates have been produced in Courts by great many of these rayats in proof of the history of their cases.

(5) With regard to the fear that if the payments are not entered in the pass books within thirty days after they are actually made the rayat will lose it, and to avoid such contentions being made in the Courts when the suits are brought, I humbly suggest that the pass books should be issued at a very small cost, say, a quarter of an anna each, and sold in the name of a rayat by either a stamp-vendor or postal authorities and should contain the important provisions of the Dekkhan Agriculturists' Relief Act. Before selling these either his signature or thumb impression should be taken, to the fact that he has understood the principal provisions of the Dekkhan Agriculturists' Relief Act, particularly of getting the payment entries made and attested in the pass book. The obvious and immediate effect of this will be that the agriculturists will understand all their rights in respect of the transactions and honesty both on the part of the agriculturists and savkars will be greatly encouraged. The attestation of both parties to the entries in the pass books are I think sufficient safeguards in the matter of accounts and entries. In every place where rural schools are opened which are chiefly intended for the sons of agriculturists the fundamental principles of the Dekkhan Agriculturists' Relief Act, *viz.*, obtaining receipts for amounts paid, getting entries in pass books made immediately after they take place, not to have false entries made, not to execute sale-deeds for mortgage and the like, should form part of elementary lessons in such schools. This will give the future agricultural classes a clear knowledge of their rights.

The question of registration and giving license to the savkars for legally lending money to the agriculturist is also commendable inasmuch as it separates after some time at least unscrupulous savkars from honest ones. Now every one who deals with money, however honestly he deals, is not above suspicion, and along with his unscrupulous brethren is sure to suffer to some extent.

Kallápur, dated the 23rd July 1912.

From—Narasingrao S. Desai, Esq., Kallápur, Taluka Hangal, District Dhárwár;

To—The Collector of Dhárwár.

With respect to your honour's letter No. 5053 of 1912, below Dekkhan Agriculturists' Relief Act Commission's letter No. 54 of 1912, I have the honour

to give herewith my views of the subject of Chapter IX of the Act and the difficult question of the receipts and accounts in reference to transactions in which one party is an agriculturist.

2, 3 and 4. It is true, as said by the Dekkhan Agriculturists' Relief Commission, that the sections 64, 65, 66 are quite ignored, as the suffering party does not bring any complaint to that effect. So the true account cannot be found. Then, the three main objects of the Act (mentioned in paragraph 4 of the Commission's letter) cannot easily be achieved. So it goes very hard for the Courts to find out the truth as they have to fight out their ways through the mass of false oral evidences. This system, as said by the Commission, has certainly demoralized the community. As long as there is scope for oral evidences this result cannot be stopped. Honest men, whether savkars or agriculturists, are the men to lose. Mostly all honest money-lenders have stopped their money-lending business with agriculturists.

5. So it is quite necessary to find out any way which will benefit both the parties and by which the confidence of both the parties upon each other will be revived as before. And such a way is certainly the one suggested by the Commission in paragraph 5 of its letter. Duplicate account books, one for each agriculturist-debtor, are useful. Without such an account no plaint should be entertained and no evidence in variation of the entries should be admitted. This is all about the money-lender; and I quite agree with the views of the Commission in paragraph 5 of its letter. But in the same paragraph as regards the agriculturist client, I am sorry I do not agree with the Commission. As soon as he makes payment it is his first duty to see the payment entered in the account book as attested by the creditor. If he fails to do this it is his folly and he must suffer for his folly. If any chance is given to him to complain within thirty days of the alleged payment, then, too, I think the Court will be flooded with such suits, and as such suits are to stand only on the strength of oral evidences, both parties will again resort to secure false oral evidences, which is again nothing but encouragement to demoralization. So I think the best way is to bind both the parties with their own account and not to give space to oral evidences. When the parties know that oral evidences will not be admitted in Courts they will never make payments without getting them entered in the accounts. For some days first it may look rather hard, but by and by it will become the usual way of transactions. And when the parties know that there is time of thirty days, then the debtor cannot insist on the creditor to make entries on the spot; if he presses, the creditor will soothe him with his usual sweet words:—"Well, friend, why do you press me now while there are thirty days before you to complain against me. So you may make your payment now without any hesitation and go home. After a week if you return back I will enter the payment in both the account books." So this time-giving will again be a tool to the creditor to deceive that poor debtor. When there is no time at all the creditor will find no space to evade the entry. Besides when the debtor is deceived by the creditor by not entering his payment in the account book, there are Criminal Courts where he can go safely with oral evidences, and if he succeeds the creditor is sure to suffer. And why then should the time of thirty days be given to the debtor to prove his payment by oral evidences in Civil Courts? Such fools there may be 10 out of 100. And why then should the other 90 be given encouragement to resort to false oral evidences for the sake of such 10 fools.

6. Such a system of duplicate accounts will certainly produce the four effects mentioned in paragraph 6 of the Commission's letter.

7. From the point of view of the creditor no objection can be raised to this proposal of duplicate accounts.

8 and 9. From the point of view of the debtor the two objections mentioned in paragraph 8 of the letter may be raised. And the replies given to them by the Commission are worth considering, and I quite agree with the Commission. And I am of opinion that such account should be accepted by the Civil Courts as conclusive evidence against debtor and as well as against creditor. This I have said because now the agriculturists are by no means in the hands of the creditors to the same extent as the previous generations of agriculturists. This the Commission admits in the paragraph 9 of its letter, and I too agree with it. Now

the debtors too have become more smart than the savkars. So if the accounts are taken as conclusive evidence and if it is known to both the parties as such, certainly the agriculturists in general will not in the least suffer.

10. If the duplicate accounts should be taken as conclusive evidence, it will not be too strong, and also I think that this system should be introduced and made obligatory on all money-lenders, literate or illiterate. The proportion of illiterate money-lenders will be very small in the first place; and of those illiterate money-lenders many engage writing clerks and get the account written anyhow. And it is their duty too. When they want to follow the profession they are in duty bound to keep the accounts in good order. They should not be allowed to take the advantage of their being illiterate.

13. I do not think it necessary that the duplicate account should be kept in books paged and sealed and issued from Government office as the attestations of both the parties are taken on both the books. It is not even possible. It is neither Kirdi nor Khata which are to be bound once in a year and are to begin and end in a settled month of the year. But these duplicate account books will have to begin, whenever a transaction opens with a new man. For a new client new books are necessary. At the same time when the clients demand money, sealed and paged account books cannot be got when the Government office is far from the residence of the savkar. In such a case transaction will have to be stopped. When attestations of both parties are necessary then it is just the same whether they are on sealed books or on unsealed books. In case of big savkars it should be made obligatory upon them to keep Kirdi and Khata in sealed and paged books, issued from any Government office. And at the time of hearing any suit the Court should see whether the Kirdi and Khata correspond with the duplicate account books of the client. As for the duplicate books attestations are quite sufficient without further safeguard.

14. As for paragraph 14 of the Commission's letter I quite disagree with the Commission and do not like to have the system of registration and license of money-lending introduced. This system will not be practicable. Money-lending business is after all a private business. To introduce a system of license in a private business, will be impossible and will seem awkward. There are many money-lenders, big or small, following the profession. If the system of license is introduced big ones will only get license while small savkars, though honest, will have to bid *adieu* to the profession. So system of duplicate accounts is quite sufficient to encourage honesty among money-lenders and no license seems necessary. A licensed stamp-vendor is bound to sell a stamp to his customer and cannot say nay; but a licensed savkar cannot be forced to lend money to all the customers. If one savkar says nay where should the poor fellow go. Licensed man does not give and the non-licensed men cannot give. So the poor fellow will be ruined; which is a result quite reverse.

15. As savkars are not paid servants of the Government they are not bound to be present at the time of village inspection by the Assistant Collectors or Mamlatdars. And also the debtors cannot be had at the time of inspection as they do not live in one and the same village and are scattered over the parts.

16. I commend the late Rao Bahadur Warad's accounts and that system of duplicate account books may safely be introduced in all parts of the Presidency.

This system of account will work well in the cases of ordinary cash transactions. The difficulty is in cases only where the property was given in the possession of the creditor on condition that the income should be used to liquidate the principal after deducting the interest. As the property is already in the possession of the creditor the income comes into his hands without the knowledge of the debtor. Then how can the debtor know whether the savkar has entered the true income in the account book? In such cases it should be made obligatory upon the savkars to take the income in the presence of the debtor and to take his attestation to the account, otherwise some penalty of money should be imposed upon the savkar, *i. e.*, twice the ordinary income of the surrounding fields should be deducted from the debtor's debt.

In case of mortgages where the income is settled as to clear off the interest only and in case of usufructuary mortgages where also the income is settled

so that it will clear off the whole debt in so many years, such accounts should not be forced.

These are my humble suggestions, sent for your honour's kind consideration.

Dhárwár, dated the 24th July 1912.

From—G. C. Shannon, Esq., I.C.S., Assistant Collector, First Division, Dhárwár;

To—The Collector of Dhárwár.

I have the honour to reply to your No. 5053, dated the 4th instant.

When I gave evidence before the Dekkhan Agriculturists' Relief Act Commission, I must admit I did not fully grasp the meaning of the proposal to have duplicate receipt books for the borrower and money-lender. On reading the Honourable Mr. Arthur's letter, I would suggest that in some Districts at least the scheme be given a trial for five years. There is the object that the borrower will put his mark to entries of double the amount he actually receives, but there is no helping that.

The only points in the proposals calling for detailed notice are in paragraphs 10 and 13 to 15 of the Commission's letter.

Paragraph 10.—I would make the system of having duplicate books compulsory on all money-lenders. There are few who are not sufficiently literate to understand it. Furthermore, I would have the books issued from the Sub-Registrars' offices, paged and sealed by the Sub-Registrar, so that when any man borrows money on sale or on a mortgage, the Sub-Registrar will be able to explain to the borrower the importance of the receipt book and the absolute necessity of having entries made promptly. I found that rayats very soon realised the value of the Tagai Resettlement and knew how many instalments had been fixed and how many they had still to pay. I ascertained in Dhárwár Taluka that where instalments under the Dekkhan Agriculturists' Relief Act have been fixed, the borrower generally knew exactly how many were still due I think the system will soon be very popular.

The proposal to register and license money-lenders would mean a great deal of work. So many of the better class rayats lend money now and again on mortgages, and the trouble to them would be considerable. If moreover the unscrupulous savkar fails to obtain or forfeits a license and so cannot legally lend money to an agriculturist, *i. e.*, the Courts will not help him to recover his dues, the savkar will only be more unscrupulous than ever. We will have more high-handedness than ever and the savkar will be driven to taking the law into his own hands.

The proposal made in paragraph 15 of the Honourable Mr. Arthur's letter is good. It will bring the system home to the savkar and the borrower.

Karajgi, dated the 20th—25th July 1912.

From—Rao Saheb V. K. Jogalekar, Karajgi;

To—The Collector of Dhárwár.

In compliance with your No. 5053, dated 4th July 1912, I have the honour to submit my views of the proposals, contained in the circular issued by the Honourable Mr. S. R. Arthur, in the following letter.

2. Having regard to facts stated in paragraphs 2, 3 and 4 of the circular one must see that some measure is necessary for the protection of the unintelligent and illiterate agriculturist-debtor as well as the honest creditor; and I heartily agree with the proposal of introducing a system of accounts which would prove

of some help to the Courts while disposing of the claims against debtors who are agriculturists and who need relief under the Dekkhan Agriculturists' Relief Act.

3. The Dekkhan Agriculturists' Relief Act was till now viewed by the public, both intelligent and unintelligent, as being a legislation intending to protect only one party, *i. e.*, the debtor class. But the mode of enquiry instituted by the Commission distinctly points out (last lines of paragraph 3 of the circular) that the Commission is fully aware of the hardship of the other party, *i. e.*, the honest class of creditors and this must result in effecting some desirable change in the course of the Judicial enquiry in relation to the creditors' side which deserves a sympathetic regard on the part of the Sub-Judges when settling the matter of dispute between the creditor and his opponent.

4. One can therefore rightly presume that the proposal as regards the introduction of the account system is likely to be regarded favourably by a majority of the savkars who have been doing business on a sufficiently large scale. But the question is however beset with difficulty as remarked by the Hon'ble Commissioner in paragraph 12 of his letter in which he is pleased also to remark " I must admit that I see no solution which is not open to objection."

5. The system is indeed faultless as I find no inherent defect in it ; and if it is worked honestly both by the creditor as well as the agriculturist-debtor, it will certainly secure all the advantages explained in paragraph 6 of the letter.

6. The difficulty which I apprehend lies in the fact that a vast majority of the agricultural population is still very ignorant, and it is difficult too to carry home to them that any system is introduced for their benefit and to expect that they will be careful enough to profit by it.

7. I do admit that the average agriculturist of to-day is better off in point of intelligence than an agriculturist of a previous generation. Some time the debtor proves to be more smart and would appear to be ready to overreach the money-lender as the latter to overreach him, as is admitted in paragraph 9 of the letter.

One can find instances in which an agriculturist-debtor pretends ignorance through illiteracy or subsequently learns to sign his signature to defeat his antagonist.

But it must be admitted that there remains a class of debtors who are really ignorant of letters and less intelligent too to guard their own interest than the above class of debtors.

But to leave them unprotected would certainly be against the principles of the Dekkhan Agriculturists' Relief Act itself.

It is in my opinion very much important that the Courts take care of the fools who are unable to protect themselves and similarly of the creditors when the opponent is found to belong to the category of the dishonest debtors.

8. The important point is as regards the amount of consideration in each case ; and the Courts are required to find as to what amount the debtor has actually received at the time of the execution of the document and similarly to know what amount is paid either in part payment or full by the debtor to the creditor. And this makes the Courts go deep into the history of the money transactions between the money-lenders and their clients ; and often-times when neither party produces satisfactory account the matter has to be decided by a mere guess-work, the evidence brought forward by the parties being unreliable.

9. I think a great part of the difficulty will be removed if it is made compulsory that the recital of the amount of consideration, whether it is a matter of bond, yadi or khata, and similarly that of the money paid by the debtor to the creditor in payment of the debt, should invariably be in the handwriting of the debtor himself.

(*a*) When the debtor is illiterate the party should be desired to have that recital made by one of the close relatives of the debtor.

In these days when education is advancing it will be not quite difficult for the debtor to find one among his relatives who could write for him.

(*b*) I would also suggest that the bond once passed should not be returned to the debtor until the whole of the liability relating to the bond is duly discharged.

(*c*) If any document bearing no endorsement is produced by the debtor during the course of the hearing, the presumption will be that it has merged into a subsequent document if any is passed between the parties.

(*d*) Failure on the part of the creditor to meet the above requirements will render him liable to the burden of proof as regards the payment of consideration.

This will serve not only as a check on dishonesty in the accounts but will even tend to encourage honesty between the creditors and debtors.

If the recitals are made by a person whom the debtor must be supposed to trust, and if there be no serious allegations of fraud, misrepresentation and the like, there will be no harm if entries in the accounts are treated as conclusive evidence.

10. Although I am in favour of the introduction of the proposed account system, I would humbly suggest that it will be not made applicable to the whole class of money-lenders, but will be restricted only to those whose income is not below 1,000 rupees a year.

The stringency of the Dekkhan Agriculturists' Relief Act has already gone a great way to reduce the business of money-lending, and credit has become dear.

Any additional check is likely to make it dearer and will therefore prove disastrous, in my humble opinion, to borrowers rather than to the lenders.

In every village there is at least one who lends petty sums to his needy neighbours; but he is mostly illiterate. And there are some who advance 2—3 big sums to such persons as are fit to borrow such loans.

Their business being very limited they don't find the necessity of keeping any accounts.

If all such money-lenders are compelled to keep account, the result would be that they will give up that business entirely, and as a consequence those that have to borrow will have to suffer.

One who keeps money-lending sufficiently on a large scale so as to earn an income of Rs. 1,000 and upwards cannot find it difficult to engage the services of a karkun if necessary, and he is also expected to be not so illiterate as the petty village savkar.

I would therefore beg humbly to submit that the proposed account system, if it has to be enforced at all, will only be made applicable to those who pay income-tax and not to all.

11. The question as regards the furnishing of paged and sealed books to savkars and registering and licensing money-lending will, I beg to submit, be reserved for the present as I fear this sort of procedure will be quite repugnant to the sentiments of savkars and will not be consistent with their ideas of independence and integrity.

12. I hold similar opinion as regards the question of subjecting the savkars' accounts to the inspection by the Revenue authorities as I am afraid that the authorities will seldom find sufficient time to scrutinize the accounts so as to be able to decide the complaints, if any, quite judicially.

This will certainly be done better in the Civil Courts where both the sides are well represented.

No. 5.

District Court, Dhárwár, dated the 25th July 1912.

From—E. H. E. Leggatt, Esq., I.C.S., District Judge, Dhárwár;

To—The Honourable Mr. S. R. Arthur, on Special Duty, Poona.

With reference to your No. 54, dated 29th June—3rd July, forwarding for opinion proposals regarding the keeping of accounts by money-lenders, I have the honour to offer the following remarks.

2. I have consulted the Subordinate Judges, the Bar Associations and some Pleaders in this District. Most are in favour of the introduction of some form of accounts though not all would make them compulsory and very few think they should be conclusive proof. I attach herewith copies of the opinions given to me by Messrs. Patwardhan and Vagh, Sub-Judges, and Messrs. Kargudri and Shivarao, Pleaders.

3. I am myself most decidedly in favour of the proposed system with some modifications and restrictions. To anyone looking at the question from a general point of view, it is obvious that in attempting to deal with the relations existing between money-lenders and ignorant debtors, (whether agriculturists or otherwise), we must keep two ends in view, the encouragement of honesty on both sides and the education of the ignorant that they may learn to look after themselves. The proposed system of duplicate accounts will, I think, help towards both these ends. In the case of every suggestion it is always possible to think of objections, and in the present case Mr. Varley suggests that payments by agriculturists will not be entered, and Mr. Mehendale suggests that the money-lender will be able to force the agriculturist to make false admissions. To a certain extent this will be true at first, but I think when agriculturists begin to understand the probative value of the accounts, they will soon learn to insist on accurate entries being made, and in case of refusal will go to a more honest money-lender or to a Co-operative Credit Society, the large extension of which I have already advocated. Again the ease with which a money-lender will be able to prove his case if both copies of the accounts tally will induce all honest money-lenders to insist on the production of the duplicate by the agriculturist, in the case of every dealing.

4. I certainly do not think however that these accounts should be made conclusive proof, at present at any rate: for I think there is much weight in the objection that if that is done the agriculturist would be in a worse position than any man is at present under the ordinary law. So the accounts would be a hindrance to the agriculturist rather than a help. Further, I do not think such a system can be suddenly introduced with accounts accepted as conclusive proof when we have for years under the provisions of the present Dekkhan Agriculturists' Relief Act been deliberately teaching the agriculturist that it does not matter what he admits in writing and that proof to the contrary will always be allowed. Moreover, as I pointed out when examined as a witness by the Commission, a money-lender would, as soon as the accounts were ordered to be accepted as conclusive proof, start an account with an admission by the agriculturist of the receipt of a large sum in cash when really the past transactions had only been made up, the amount found due being entered in the account as a sum received in cash, and the agriculturist would be precluded from disputing the item. Provision might possibly be made for such a contingency, but the same kind of thing is sure to occur for some considerable time to come when the agriculturist takes a loan or *possibly* even when accounts are made up, and I think that for the present it would be far better to make the accounts presumptive proof, the burden of proof being placed on the person who disputes an entry or alleges a payment not entered. If the accounts are made presumptive proof, the question of limiting an agriculturist to a fixed period within which to prove a payment not entered or to dispute an entry would not arise: but I think it would be advisable to allow an agriculturist to come to Court within a certain time to prove his allegation as to a particular entry or a particular payment omitted, so as to give him an early opportunity of correcting a false account, thereby making the fact easier to establish.

5. The question then arises whether all persons who lend money should be made to keep these accounts. As regards this, two main objections have been raised: first, that persons who have only small money-lending dealings cannot afford to keep a clerk to write their accounts and many of them are themselves illiterate; and secondly, that the system would deter an agriculturist from lending money to a friend or neighbour.

The first objection appears to me to be based on a misapprehension of the nature of the accounts. Most money-lenders keep tippans of some kind relating to their dealings and the proposed accounts are really nothing more than tippans

in duplicate. Money-lenders carrying on a small money-lending business would have no need to keep a regular karkun. Any literate neighbour or a kulkarni or village school-master would probably be quite willing to make the necessary entries on payment of a very small fee: for each time there would usually be only one entry to make in each account. If the result of the introduction of the system were to prevent *professional* money-lenders who keep no accounts from continuing to carry on a money-lending business, I think it would be a very good thing, for it is just those who keep no accounts, or pretend to keep none, who are mainly responsible for the frauds committed on agriculturists. In this connection I may quote the following significant remark made by the Gadag Bar Association in its report on the proposed system :—

> "The number of educated money-lenders who deal largely in such business is small when compared with that of illiterate temporary savkars. We know from our experience that the dishonesty which the provisions of Chapter IX are meant to check is to be found among the latter only."

It is however possible that there are persons honest but illiterate, who though not professional money-lenders occasionally lend money, to whom the keeping of even these accounts would be a hardship, but I think the proposals I will make presently regarding the second objection will meet this possibility also.

The second objection I think is a very real one. There must be many occasions on which an agriculturist in fairly good circumstances is willing to make a temporary loan to a friend in order to help him through a bad time, and to force him to keep such accounts for every temporary transaction of this nature would probably check these friendly, and altogether admirable, dealings very greatly. It is however, I think, correct to say that these transactions hardly ever appear in Court at all, but are settled privately. Those who lend the money however will necessarily feel that they *may* want to come to Court, and to allow them to do so without having to keep accounts I make the two following suggestions, either of which, I think, would also meet the case of the honest but illiterate money-lender whose dealings are so small that he does not usually find it necessary to keep any accounts. The two suggestions are meant to be alternative but might possibly be combined:—

> (*a*) A man who has money dealings with an agriculturist might be allowed to bring two or three suits to recover money due without being obliged to keep any accounts but not more. If I am right in thinking that these transactions hardly ever come to Court, a man who has to bring more suits than that must either be so unfortunate in his friends or his clientele that it would plainly be to his own advantage to keep accounts, or he must himself be so careless or dishonest that he might well be forced to do so.
>
> (*b*) A man whose capital lent did not exceed more than, say, Rs. 500 or Rs. 1,000 might be exempted from the operation of the rule requiring him to keep accounts. The difficulty of finding out the real amount of his capital lent might be met in this way. When he brings a suit without producing accounts and pleads exemption from the rule he might be required to make an affidavit giving the name of each creditor and the amount lent. This, if not rebutted, would be accepted as correct in that suit, but his affidavit should be taken as conclusive *against* him in any suit brought afterwards by him against a debtor so that he would be unable to recover more than he had specified in the statement. I think such an inducement to make a true statement of his dealings would be almost irresistible.

It has been contended that the account system could not be applied to sales and purchases of grain and groceries made by agriculturists on credit, but I fail to understand why this should not be done. An agriculturist would soon learn to take his account with him if he wished to make purchases on credit. If however this objection be thought a real one, petty retail purchases could easily be exempted.

It has also been objected that money-lenders do not always know if a person is an agriculturist or not, but if he is in doubt it is easy for him to keep accounts in this form. If he fails to do so he must understand the risk he runs. To allow him to plead ignorance of the status of his debtor would render the whole system nugatory.

Several other objections have been raised to the proposed system but some are of so trifling a nature that I need not detail them, while others disappear if the accounts are only presumptive proof.

6. I agree with Mr. Vagh in thinking that all money-lenders should be required to take out a license and that this rule should not be part of an Act dealing only with transactions to which agriculturists are parties. It is however necessary to be very cautious in deciding on a penalty for fraud. The cancellation of a license with the consequent sudden stoppage of business would be so serious a penalty that it should not be ordered except by a competent authority and after proper enquiry.

7. I am decidedly of opinion that the duplicate accounts should be kept in books paged and sealed and issued by Government. This will completely prevent the money-lenders from keeping double sets of accounts, for the purpose of showing one set to the debtor and suing on the other. This can only be done either by issuing the books in duplicate, each pair bearing one number or other distinguishing mark or by numbering all books consecutively and requiring the money-lender to use the earlier of any two consecutive numbers, the agriculturist being given the latter number.

One inconvenience has been suggested as likely to arise if the accounts must be kept in books issued by Government: for a money-lender may be asked to lend money at a time when he hasn't such books with him but such instances would not be frequent and in any case I think the security that would result from the use of such books would far outweigh any possible inconvenience.

Dhárwár, dated the 15th—16th July 1912.

From—G. V. Patwardhan, Esq., Subordinate Judge, First Class, Dhárwár;

To—The District Judge, Dhárwár.

In reply to your No. 2427, dated 4th instant, I have the honour to state as follows.

2. The proposed system of accounts provides—

(*a*) that every money-lender should keep a separate account in duplicate of his dealings with each agriculturist client;

(*b*) all transactions between them should be entered when they take place, in both copies and attested by the signature (or the thumb impression if illiterate) of both parties; one of these copies should remain with the money-lender and one with the client concerned;

(*c*) no plaint should be entertained by Court without an entry from the account being attached to it; and the account itself must be produced at the time of hearing;

(*d*) no evidence should be admissible in variation of entries attested as provided above by the parties;

(*e*) no proof of payment by money-lender to client should be admitted unless entered in the accounts and attested;

(*f*) no evidence of payment in cash or kind by client to money-lender should be admitted after the expiry of 30 days from the alleged payment;

(*g*) the signature of the party on such an account should be accepted as conclusive against him.

Clauses (*a*) and (*b*) lay down a rule that every person lending money to an agriculturist shall keep an account in a certain manner and the remaining clauses mention the effect that it is to be given to such an account and the consequences that will follow an observance or non-observance of the said rule. I think there can be no doubt as to the advantages and usefulness of an account so kept. The question is as to the propriety of the means by which the system is sought to be enforced or brought into operation.

3. Clause (*c*) provides that no plaint should be entertained by a Court without an extract of the account being attached to it. There is no hardship in this rule for a creditor who keeps such an account and preserves it carefully. But for one who either does not keep it or having kept it happens to lose it, or if it is otherwise destroyed, the rule will prove a great hardship. He will be debarred from bringing a suit for the recovery of his money. This will in my opinion be too severe a penalty. A petty money-lender, ignorant and illiterate, will find it difficult to keep such an account. An exception will have to be made in his case. The question is where to draw the line. It might be said that those who pay the income-tax, whether literate or illiterate, or to be able to keep such an account; and this is not unreasonable. The words "every money-lender" in clause (*a*) may therefore be qualified by the words "paying income-tax to Government". In the case of other money-lenders the keeping of such an account may be made optional. Again the suit should not be barred if the account is either lost or destroyed.

4. This system of keeping an account will be of little use in the case of usufructuary mortgages, though it may be of great use in the case of simple bonds and simple mortgages, when an account is to be taken under section 13. No accounts are kept of the profits of a mortgage land and even if they be kept under this system it is doubtful how far they will be reliable.

5. Clause (*d*) provides that no evidence is to be admitted in variation of the entries in the account. This I think would conflict with the provisions of sections 12 and 13 under which the debtor is allowed to repudiate any transaction on the ground of fraud, mistake, accident, undue influence, etc., and the Court is bound to set aside any agreement between the parties as to allowing compound interest, etc., and any settlement of account purporting to close previous dealings and create a new obligation, even though it be under a duly registered instrument. This was intended for the protection of the agriculturist and it would be going directly contrary to that intention to enact that the debtor will be bound by the entries in the account. It is said that the present system puts a premium on dishonesty and it is no use making an attempt to protect the fool from the results of his folly. This argument, I humbly submit, strikes at the very root and foundation of the Dekkhan Agriculturists' Relief Act, for the chief purpose of it, as I understand it, was to protect the foolish and ignorant agriculturist. If this object is no longer to be kept in view, I see no reason why the Act should not be wholly repealed. It is quite true that the Act has led to dishonesty, and in order to avoid this effect it is proposed that the agriculturist should be bound by the entries in the account. If so, why should he not be bound by the recitals contained in a document solemnly executed by him and duly registered. This conclusive effect had not been given even to the village registration system under which the debtor executed his deeds before the Registrar, and still fraud could not be prevented. The creditor made a show of paying the consideration in cash before the Registrar and took it back immediately on leaving his office. That system I understand is now being abolished because it failed to accomplish its purpose. Shall we then give a higher effect to the entries in the account than that accorded to a solemnly registered instrument? Under the Indian Evidence Act, section 92, it is permissible to give evidence contrary to the terms of a document under certain circumstances such as fraud, etc. If this privilege is enjoyed by everyone, even a non-agriculturist, shall we deny it to an agriculturist for whose protection we are trying to do so much. I think we shall seriously prejudice his interests if we give a conclusive effect to the entries in the account. The remedy will prove worse than the disease. I am therefore opposed to this clause.

6. Clause (*e*). The money-lender usually takes a bond or a pro-note for a simple loan and a registered deed for a mortgage. Now if any such transaction happens to be not entered in the accounts either to inadvertence or negligence, is it meant to exclude the evidence of the documents for proving the transactions? I think it won't be fair and proper to do so. Perhaps it is meant to exclude oral evidence only; if so it would be only fair and reasonable to do so.

7. Clause (*f*). This clause provides that no evidence of payment by debtor to creditor is to be admitted after the expiry of 30 days from the alleged payment. Under section 64 of the Dekkhan Agriculturists' Relief Act the creditor is bound to

pass a receipt to his agriculturist-[redacted]debtor for any payment of money made by him, whether he demands such a receip[redacted]t or not. But this does not prevent a debtor from proving the payment by anyone o[redacted]f the ordinary legal modes of proof, 18 Bombay 690. Under section 91 of the Evidenc[redacted]e Act a payment can be proved by other evidence even though a receipt may have[redacted]been passed for it. The proposed clause goes farther than this and shuts out all evi[redacted]dence of a payment except the account. Thus we are making the rule harder [redacted]for the agriculturist than what is applicable to the general public. The clause[redacted]implies that the debtor will be at liberty to prove a payment within 30 days f[redacted]rom the date of it. The tribunal before which and the procedure by which the p[redacted]ayment is to be proved within 30 days have not been dicated. I think these a[redacted]re matters of no small difficulty. The suit in which the uestion of such a payme[redacted]t may arise may not come before the Court for a long ne after, and when it d[redacted]oes come, what effect is to be given to the previously corded finding about th[redacted]e payment? The proposal does not contain any definite es on which this part[redacted]of the system is to be worked, and hence I cannot say ything more about it[redacted].

8. It is said t[redacted]hat even if oral evidence of payment be admitted it is dis-lieved by the C[redacted]ourts in the majority of cases, and hence the cultivator will not in a wor[redacted]se position than at present. I submit that this argument might as ll apply [redacted]to other classes of people better situated than the agriculturist and ill they a[redacted]re at liberty to prove payments by means of other evidence under ction 91 [redacted]of the Evidence Act. If so, why make the position of the agriculturist orse b[redacted]y treating him differently from the general public in this respect and ak[redacted]ing special legislation for him which is by no means calculated to prove more [redacted]eficial to him.

9 [redacted]Clause 8. I have already stated that if the entries in the accounts are to be cons[redacted]red as conclusive, sections 12 and 13 will have to be materially altered and the [redacted]riculturist will thereupon be placed in a worse position that he would otherwis[redacted]e under the general law or than he has been under the Dekkhan Agricultu[redacted]ts' Relief Act as it now stands. If the creditor gets his signature to an entry [redacted]a loan ostensibly paid in cash but really made up of past debts, he won't be a[redacted]le to plead the real state of things. Again if a settlement of accounts takes pla[redacted]ce and a certain sum is ascertained as having been found due on a particular d[redacted]ay and attested by the debtor he would be precluded from saying that he did not u[redacted]nderstand the accounts and did not know how the sum was arrived at. The ob[redacted]ject of sections 12 and 13 is to reduce the debt of the agriculturist by disallowi[redacted]ng compound interest and taking a history of the past debts. The Courts now f[redacted]ind it difficult to work out these provisions for want of the necessary materials. T[redacted]he proposed system of accounts is intended to remove this difficulty by providing m[redacted]ore stringent rules of evidence than those laid down in the Indian Evidence Act. The effect of these Rules will, it is feared, be to practically deny the agricultur[redacted]t-debtor the benefit intended to be given to him by means of sections 12 an[redacted]d 13.

10. The [redacted]difficulties sought to be overcome by the proposed system are undoubtedly re[redacted]al. The manner of keeping accounts suggested therein is certainly very good but the means by which it is intended to be enforced and brought into operation are of doubtful utility and the proposed measures seem to me too drastic and severe. It is quite probable that many claims will be lost by the provision that no suit should be entertained unless an extract from the accounts is produced with it. A person may advance a loan to a friend and may find it indelicate to ask him to attest an entry in the account, and if perchance he is required to sue for it he will be put out of Court simply because no account had been kept in the prescribed manner. Creditors are no doubt to be encouraged to keep an account in the manner suggested but in order to introduce the system we should not have recourse to very severe measures which would only make it unpopular. In order to introduce the system without at the same time making it hard and unpopular I have to make the following suggestions involving certain rules to be observed in regard to the burden of proof:—

I. In every suit falling under the Dekkhan Agriculturists' Relief Act the creditor shall produce along with his plaint, if he be the plaintiff, and with his written statement, if he be the defendant, an account of his dealings with the

debtor in so far as they be relevant to the suit, provided that if an account under the system herein recommended has been kept by him, the necessary extract from such account only and from no other shall be produced.

II. The burden of proving whether the consideration was paid in cash, or where it consists of past debts, how much of it was principal and how much interest, shall ordinarily lie on the creditor provided that if he has kept an account under the system herein recommended and the entries in such account shall be taken as presumptive evidence as to the truth of the facts stated therein regarding the consideration and the burden of proving anything to the contrary will then lie on the debtor.

III. The burden of proving a payment to the creditor shall lie on the debtor as at present, but if the creditor has kept an account under the system herein recommended, the Court shall not take into account any payment not entered therein so far the suit in which such payment is alleged is concerned. Nothing herein contained shall prevent the debtor if he so chooses from suing his creditor for the recovery of the money so paid. (This is a penalty for not getting the payment entered in the account and a remedy is left open to him at the same time. The severity of the measure is thereby softened.)

IV. These provisions will of course have no retrospective effect so far as the new system of accounts is concerned.

11. According to the above suggestions it will no doubt be optional with the creditors to keep an account under the proposed system, but if they be substantially relieved of the burden of proof now thrown on them, they will find therein a strong incentive to keep such an account, and the debtors too will be careful to see that the entries are properly made. Chapter IX should be extended to all districts. The proposed system of accounts should be embodied in section 66. The said chapter has so long remained a dead letter because people did not perceive any effect being given to it in the actual trial of suits. When they perceive the consequences of it resulting from the rules about the burden of proof suggested above by me, they will appreciate the importance of it and the system will, before long, begin to bear fruit, without any revolutionary changes being made in the existing law.

12. I am of opinion that the account should be kept in books paged and sealed and issued from a Government office. I do not think that the inspection of such accounts by Revenue officers will be of any material advantage by way of safeguards. Section 67 will be enough. I am not in favour of a system of registration and license of money-lenders. It will seriously limit the number of persons from whom the agriculturists will have to borrow money.

Dhárwár, dated the 16th July 1912.

From—V. V. Wagh, Esq., Joint Sub-Judge, Dhárwár

To—The District Judge, Dhárwár.

With reference to the question of duplicate accounts and kindred matters, I have the honour to submit the following report.

The subject is one which is, no doubt, beset with great difficulty.

I am clearly of opinion that it is radically wrong to impose a cut and dry system of accounts on a people who are not prepared for it, and to rule that no transaction not supported by such accounts shall be proved in a Civil Court. If the system is introduced and made compulsory, it is said that the people will get familiarised to written accounts, as they are now to the Record of Rights and that they will produce their accounts with their suits or written statements, as they do now the extracts from the Record of Rights. But the analogy is deceptive.

The Record of Rights are prepared by paid servants of Government and supervised by higher officers. They are preserved in the custody of Government officers. Parties when they want, get extracts from them for the mere asking. In

places where they may not be kept and even when they are wrongly kept the suit does not suffer on its merits, and the Record of Rights is corrected according to the finding in the suit.

It is obvious that the Record of Rights are confined to each village to the lands comprised in the village. But the money transactions that take place in a community are infinite. The transactions that form the subject of disputes in Courts bear only microscopically small proportion to the infinitude of transactions that actually take place. It is a question, therefore, whether it would be wise and politic to impose on the society stringent rules respecting accounts in order to afford protection to a small fraction of lenders and borrowers who are driven to Courts.

The difficulties that present themselves to my mind are numerous.

In the first place, it will be necessary to clearly specify the nature of the transactions to which this compulsory keeping of duplicate accounts will apply. It could not apply to sales or purchases of grain and of groceries made by agriculturists on credit. It could not apply to the payments made by agriculturist tenants, in cash or kind, to the lessors unless when these payments happen to be towards payment of interest on a debt. It will have to be clearly specified that the keeping of accounts is wanted in respect of transactions which happen as part of money-lending dealings between a creditor and his agriculturist-debtor.

The second difficulty is that there is a large class of money-lenders who cannot write accounts. Sometimes the money-lender dies and his wife or minor son cannot do the writing. Compulsory accounts will press heavily on this class of money-lenders, as also on others whose transactions do not extend beyond a few hundred rupees.

The third difficulty is that there is a large class of persons who may be apparently petty shopkeepers, peons, constables and clerks but who when their private circumstances are carefully scrutinized turn out to be agriculturists under the Dekkhan Agriculturists' Relief Act. If money-lenders lend money to this class of people believing that they are non-agriculturists, without keeping duplicate books, it would be a great hardship that the Court should refuse to recognize such transactions if the debtor proves that he was an agriculturist when they were entered into.

Another difficulty is that the system will place an embargo on numerous casual transactions of borrowing and lending that take place in the ordinary course of human affairs between man and man. So numerous occasions arise, on odd occasions and at odd places, for giving and taking of loans without writing that it would be an unnatural system of law which requires that all such transactions shall be evidenced in writing on pain or being not recognized by Courts if not so evidenced. Though the law is intended to apply only to money-lending to agriculturist-debtors, we have to bear in mind that the proportion of agriculturists to non-agriculturists in rural India is very large indeed.

One of the proposed rules is that no evidence should be admissible in variation of entries attested in the duplicate account books, that is, in other words, the accounts should be conclusive evidence of the mutual dealings between the creditor and the debtor.

The result of this rule is that it places the ignorant agriculturists in a worse position than a non-agriculturist-debtor. The latter is permitted by law (proviso 1 of section 92 of the Evidence Act) to prove that the recitals, contained in a duly executed and even registered bond, showing payment of consideration in cash, are false and that the consideration even though certified by the Sub-Registrar was not actually paid. This liberty to prove non-receipt of money though contrary to written deed, which is enjoyed by the Judge should he happen to be a party in a case, is to be denied to an ignorant agriculturist when he comes as a party before him. This would amount to protection with a vengeance. The legislature will have to think twice before they decide to deprive the agriculturist-debtors of the privilege enjoyed by his non-agriculturist brethren under the ordinary law.

It is unnecessary to add that this exclusion of oral evidence will be all the more injurious to agriculturists, for it is common knowledge that under pressure

they pass bonds or receipts for larger amounts than they actually receive. In this way we shall deprive the agriculturists by the left hand of the relief which certain provisions of the Dekkhan Agriculturists' Relief Act seek to give with the right.

Having stated what I think would be the inconveniences and disadvantages of the system of duplicate accounts, I will proceed to consider whether we should make no step in advance.

Is the present state of things satisfactory? I think not. I have been always advising the money-lenders who come as parties to Court to keep accounts and telling them that those who do extensive money-lending without keeping accounts are as it were a fraud.

It appears to me that some provisions of law may be enacted in order to popularise keeping of accounts. It would be desirable by some suitable provisions to educate the public mind on the wisdom and necessity of keeping accounts, and accustom money-lenders to the keeping of accounts.

With this object in view I would suggest that a system of what may be called the money-lender's license may be started. When any person deals in money-lending and the extent of it is such that the principal advanced by him is not less than Rs. 3,000, he should, before giving further loans, be required to obtain from the Collector of the District or his Assistant a license for money-lending. There should be no charge levied on the grant of this license, but it should contain provisions requiring the lender to keep regular accounts of all his money-lending dealings, irrespective of the fact whether the debtors are agriculturists or non-agriculturists, on pain of fine if they are not kept and the omission not duly accounted for. It is questionable whether this enactment of law could rightly form part of the Dekkhan Agriculturists' Relief Act. The Dekkhan Agriculturists' Relief Act could only deal with the question of accounts in connection with agriculturists.

So far, therefore, as the Dekkhan Agriculturists' Relief Act is concerned, I would suggest the following as the opening section of Chapter IX.

Where a money-lender or trader keeps a separate account in duplicate of his dealings with an agriculturist and enters all transactions between them when they take place in both the copies, and has them attested by the signatures (or the thumb print if illiterate) of both parties, and keeps one copy with himself and the other with the debtor, such accounts if produced by either party shall be regarded as presumptive evidence of the truth of the entries made therein, in a suit between the parties or their successors in interest, and in an enquiry under sections 12, 13 and 16 of the Dekkhan Agriculturists' Relief Act.

A provision to this effect would afford some relief to the lender against the stringency of sections 12 and 13 of the Dekkhan Agriculturists' Relief Act by shifting the burden of proof from his head to that of the debtor and is likely to induce the savkars, at least the honest ones among them, to adopt this system. The agriculturist on the other hand by being provided with means of having his accounts scrutinised from time to time may rightly be held responsible to prove that what is contained in the accounts is not true.

This must answer our present purposes. It would not do to make account keeping in this mode compulsory, or to rule that these accounts shall be conclusive evidence.

If there be a strong desire on the part of Government to give a trial to the compulsory system of account keeping then a proviso may be made to the suggested section to this effect " provided that the Local Government may by special notification order temporarily or otherwise that in any district or part of a district accounts under this section shall compulsorily be kept by money-lenders or traders dealing with an agriculturist."

This would enable the Government to give a trial to the system in sufficiently advanced parts of the Presidency like one or the other of the districts in the Konkan.

Books for accounts paged and sealed and issued from a Taluka or Mahal Kacheri may be issued but only cost price shall be charged for them. It should not be however obligatory on persons to keep the duplicate accounts in those very books.

Regarding the system of registration and license of money-lenders, I have stated above what I think should be the provisions. It appears that the revocation of licenses on proof of fraud would not be right. If fraud is proved the party may be punished for it by a Civil or Criminal Court. But a revocation of a license means a sudden stoppage of fresh dealings with all the old debtors, many of whom will naturally be prejudiced by their dealings with the savkar being suddenly cut off. Though a savkar might act fraudulently towards a debtor who is himself fraudulently disposed, he may be honest in his dealings towards many others. It would not therefore be right to cancel his license on a fraud being detected. The damages caused by his fraud to society might be exacted from him, but it would not be right to stop his means of earning an honest livelihood, by using his money as best as he can to the advantage of himself and those dependent on him.

Our ideas of what is fraud differ according to the views of individual Judges. If the fate of money-lender's license is to hang on the finding of a Court respecting the character of a transaction the very direct effect of the rule would be that savkars, rather than rely on the idiosyncracies of Courts would stop lending to agriculturists. This will lead to the further impairment of the agriculturists' credit and bring the usual evils in its train.

From—N. G. Kargudri, Esq., B.A., LL.B., Pleader, Dhárwár;

To—The District Judge, Dhárwár.

With reference to your office No. 2422 of 1912, I have the honour to submit my report as follows.

(1) There is no doubt that the system proposed by the Honourable Mr. S. R. Arthur and referred to in his letter, paragraph 5, is, on the whole, desirable in the interests of both money-lenders and of agriculturists and that it will produce the results referred to in paragraph 6 of the letter, if that system is introduced and worked for some time.

(2) Regarding the objections likely to be raised to the proposed system by money-lenders, I do not think that any objections can be and should be raised by them.

(*a*) As to big money-lenders, who must have kept their regular accounts regarding all their dealings, it is very easy for them to keep separate account in duplicate of their dealings with agriculturist-debtors.

(*b*) But in the case of money-lenders whose dealings are not extensive and who have not kept or do not keep regular accounts, such a system of keeping separate accounts in duplicate will make their position more secure and free from suspicion. I know that such money-lenders sometimes keep rough notes or tippans as to their dealings or rely upon bonds and endorsements thereon or memory. But when their transactions come before the Court and are impeached by debtors and when they do not and cannot produce their accounts, presumptions or inferences will be necessarily drawn against them and they will lose their money, even though their contentionns, are, in few ins ances, true. But these persons can very safely rely upon these separate accounts in duplicate, which are complete in themselves, and no inferences can be drawn against them, ev-n if they do not keep regular accounts as to all their dealings. So this system is clearly to their advantage.

(*c*) But we find in villages and towns persons who are not money-lenders by profession, but who lend money out of their savings to few argriculturists out of friendship, or relationship or out of sympathy. Many landlords lend money to their tenants or servants. They generally get bonds,

promissory notes or lend money even without them. No doubt such transactions may not generally come before Courts. But if the proposed system is introduced, such persons also must keep separate accounts in duplicate. Such instances cannot be said to be few. In every village such transactions do take place, and in some cases persons advancing money are illiterate. I fear whether the proposed system is likely to put a stop to such dealings which take place out of pure confidence and trust in each other. I need not state that mutual trust is necessary and must continue to prevail in all places but such trust is likely to disappear on account of the proposed system being introduced. The only suggestion which I can make is that this system should be made compulsorily applicable to all professional money-lenders and be made optional in the case of persons who lend money only to a few persons and whose dealings in all do not go beyond Rs. 500, or Rs. 1,000.

(3) As to the objections likely to be raised on behalf of debtors, which have been discussed in paragraph 8 of Honourable Mr. Arthur's letter, those objections have been well answered by him.

(*a*) The present system regarding the evidence of payments consists of entries in the accounts of creditors, if any; endorsements on bonds, if any; and receipts passed by creditors. Ordinary money-lenders very safely state that they have got no accounts, when there is nothing in writing for debtors to show their alleged payments. Some dishonest money-lenders not only do not give any receipts, but also do not enter the payments in their accounts though they have got them. Again debtors many times do not care to see endorsements duly made on the bonds or to have receipts for their payments. So practically the debtors do not have with them any writing in this respect and they have to rely on the goodness and honesty of money-lenders. It is necessary in their own interests to have a copy of their accounts with them to prove their case, in case of litigation and also to know their financial situation.

(*b*) A sort of this system does prevail amongst traders. Every year each trader does send an extract of his accounts to his customer or client for information and demands his dues from him, if any. If this is so, why a money-lender should not furnish a separate account in duplicate to his debtor according to the proposed system.

(*c*) I can only suggest in the interest of debtor-agriculturists who are illiterate, that the endorsements of their thumb impressions should be made in the account book by some person with whom they are acquainted.

(*d*) In spite of certain objections which can be raised to every system, I think that the system proposed is necessary and on the whole advantageous to debtors as well.

(4) Now, as to the question whether this system should be made applicable also to money-lenders who are illiterate, I may state that the question depends on the extent of dealings rather than their being literate or illiterate. All big money-lenders are generally literate. It is only some agriculturists in villages who are illiterate and who can lend money; but I do not think that such persons have got extensive money dealings or they are money-lenders by profession. Their dealings may not extend beyond one or two thousand rupees. Such illiterate persons ought to be exempted from the operation of the system. My suggestion is that all persons who are money-lenders by profession must keep the accounts according to this system whether they are literate or illiterate. But illiterate persons who are not money-lenders by profession and whose dealings do not extend beyond some fixed sum, say, Rs. 1,000 or Rs. 2,000, should be left option to keep such accounts.

(5) As to the evidentiary value to be attached to the accounts kept according to this system, I am not in favour of these accounts being made conclusive. They should not be placed on a higher level than actual admissions of the parties, which are not conclusive. They must have strong presumptive value and the burden must be thrown upon the parties who allege any incorrectness, mistake, fraud and undue influence. It is, no doubt, true that such cases are not many

and any oral evidence to prove incorrectness, etc., is not generally believed by Courts. But still there may arise cases in which evidence of really respectable witnesses is forthcoming or in which the regular accounts of the creditors or other circumstances throw much light on allegations against the entries in the accounts kept according to this system. In such cases, which may be few, the party making such allegations should, in the interest of justice, have an opportunity to prove them.

(6) I do not think it desirable to have a system of registration and license of money-lenders who should only legally lend money to agriculturists. The system, if introduced, will have the effect of doing away with the class of ordinary money-lenders and of compelling the agriculturist-debtors to go to particular licensed money-lenders, even against their wish, thereby limiting their choice.

(7) As to the question whether these separate accounts in duplicate should be kept in books paged and sealed and issued from a Government office, I have to state that only such money-lenders who pay income-tax should be asked to keep separate accounts in such books, but not all. Such books if paged and sealed and issued from Government office will necessarily contain some form according to which the account should be kept, and some details should be written, and they will introduce one uniform system of keeping the accounts in duplicate throughout the Presidency.

(8) As to these accounts being checked by the Mamlatdars and Assistant Collectors, I see no objection to this rule being framed. No doubt, some creditors or debtors may not like that the debts of honest and respectable men should be seen by others. But this feeling is disappearing gradually, as we find even respectable persons and merchants borrowing money from Co-operative Banks, urban or rural, which are established here and there.

From—A. Shivarao, Pleader;

To—The District Judge, Dhárwár.

With reference to your No. 2423, dated the 4th July 1912, requiring me to submit my report on the Honourable Mr. S. R. Arthur's letter No. 54 of 29th June 1912, about Chapter IX of the Dekkhan Agriculturists' Relief Act, I beg to state as follows.

The question raised is whether the application of Chapter IX of the Dekkhan Agriculturists' Relief Act would serve any useful purpose. It seems to me that the application of the said Chapter IX would be highly advantageous to Courts as well as to the lenders and the debtors. The point has arisen in connection with the difficulties now surrounding the work of investigating the history of transactions with agriculturist debtors. As matters stand at present the task of investigation of such history would seem to baffle all attempts at a satisfactory and just conclusion—and Courts often-times are reduced to mere guess work in this matter. The very nature of the dispute in such matters lends room to exaggeration and falsehood by both the creditor and the debtor. The introduction of Chapter IX would have the advantage of obtaining accurate account of transactions as they occur on both sides. This regular account would effectively stop the way to falsehood and dishonesty on either side, and would show the history of transactions clearly.

Paragraph 5 of the Honourable Mr. Arthur's letter proposes the following scheme :—

1. Every money-lender to keep a separate account in duplicate of his dealings with agriculturist-debtors.

2. All transactions between them should be entered when they take place, in both parts and attested by both lender and debtor.

3. One copy to remain with the lender and one copy with the debtor.

4. No plaint to be entertained by Court without an extract from the account being attached to it. The account itself to be produced at the hearing.

5. No evidence to be admissible in variation of the entries attested by both parties as provided above.

6. No proof of payment by money-lender to debtor to be admitted unless entered in the account and attested by both sides.

7. No evidence of payment in cash or kind by the debtor to the lender to be admitted *after the expiry of thirty days from the alleged payment.*

Unless entered in the account and attested by both sides.

The above scheme appears to me to be on the whole good and feasible. ..... But I would suggest an alteration in the 7th item of the scheme noted above. I would put the lender and debtor on the same level. It does not appear to me to be fair to give an undue advantage to the debtor by permitting him to otherwise prove an unentered and unattested repayment, within thirty days or within any period after such repayment. I wish that the entries made and attested by both sides, as contained in the accounts, should bind both parties. I am afraid that this proposed latitude to the debtor would again open the door to falsehood and dishonesty, which the contemplated scheme attempts to stop. There can be no hardship in a rule which treats both sides on an equal footing. I would therefore wish to score out the italicised portion of item 7 of the scheme and to have in its stead the words stated in the margin of that item.

With reference to paragraph 10 of the letter, I would state that the duplicate accounts may be made conclusive proof of the transactions unless the party, whether creditor or debtor, setting up a variation from them can show a case of coercion, section 15; undue influence, section 16; fraud, section 17; or misrepresentation, section 18, of the Contract Act. I also think that this system of account should be made obligatory on both the literate and the illiterate as otherwise the working of the scheme would be rendered futile.

With reference to paragraph 13 of the letter I would say that books issued by Government are not necessary. It seems to me that an account of entries with attestation by both parties is sufficient without further safeguards.

With reference to paragraph 14 of the letter I would say that the registration and license of money-lenders is not necessary.

With reference to paragraph 15 of the letter it seems to me that any further checks, in the form of inspection of accounts by the Assistant Collectors or by the Mamlatdars or otherwise, are unnecessary. I am afraid that such measures might, for various reasons, lead to discontent and complications.

The above is my humble opinion on the points under consideration.

No. 6.

Dated the 30th July 1912.

From—L. C. Swifte, Esq., I.C.S., Collector and District Magistrate, Poona;

To—The Dekkhan Agriculturists' Relief Commission, Poona.

In reply to your letter No. 54, dated 3rd July 1912, asking for my views on the subject of Chapter IX of the Dekkhan Agriculturists' Relief Act and the difficult question of receipts and accounts in reference to transactions in which one party is an agriculturist, I have the honour to inform you that I am generally in favour of the proposal but think there will be difficulty in working the contemplated arrangements, more especially in the case of petty illiterate Banias who lend small quantities of grain or other articles of the kind and in the case of petty loans whether of cash or kind between agriculturists themselves. Should, however, the system of keeping duplicate accounts be made compulsory on literate as well as illiterate parties, I am of opinion that the form of accounts prescribed in that connection should be held as conclusive evidence of the state of the relations

between the parties except in cases where either party can prove to the satisfaction of the Court that forgery or fraud has taken place. Where a party attempts to prove this, it would be impossible to refuse to hear him by reason of a legal time limit, as experience with Government accounts shows that frauds do not come to light in most cases till some time after their perpetration. As to inspection, I would suggest that a specialist officer be appointed for the purpose. Scrutiny by Revenue Officers is not likely to be close enough to detect malpractices in most cases.

2. With reference to paragraph 13 of your letter, I think that the money-lender should produce before an officer of the grade of the Head Karkun, the books already paged which are required to be kept by the agriculturist and himself. After verifying the correct numbering of the leaves of the books, the Head Karkun should have them sealed, and returned to the parties. When payments in kind are made by the agriculturist, their value in cash calculated according to the then prevailing rate should be entered so that there might be no question afterwards as to their correct value. Constant interference and inquisitorial scrutiny of private transactions by Government officers is to be deprecated as likely to interfere with the free course of business and restrict the credit of cultivators, besides entailing much expenditure of time on the part of officials and perhaps of money on the part of Government.

3. I am not in favour of compulsory registration of money-lenders.

No. 7.

Poona District Court, dated the 23rd July 1912.

From—C. C. Boyd, Esq., I.C.S., District Judge, Poona;

To—The Honourable Mr. S. R. Arthur, I.C.S., on Special Duty, Poona.

With reference to your letter No. 54 of 3rd July 1912, I have the honour to report as follows.

I entirely agree with the idea of compulsory accounts for all money-lenders who are able to write well enough to sign their names. In fact I was going to propose it. The duplicate books should be kept in the language of the debtor. Every Civil Court should be authorized to fine any person summarily for breach of any rule on this subject. The accounts should be kept in books paged and sealed and issued gratis from a Government office; for otherwise they will not be kept in the proper form or on good paper and will be flimsy and untidy.

But I cannot think that the entries in such books should be conclusive proof. It is certain that the debtor will often readily put thumb-impressions to entries of far more money than he has really received. And often, when he makes a payment, he will not trouble to see that it is entered in his book. Theoretically he will keep one of the duplicate books in his possession; but in practice the book will sometimes (I do not say in most cases) be left in possession of the lender, just as the rayat sometimes leaves his Revenue *pavati* book with the kulkarni. The system of compulsory accounts will be by no means a panacea, as set out in your paragraph 6. But still it will do some good, by degrees. I would not even go so far as to say that entries in the accounts should raise a presumption. Accounts will often be untrue. According to the present law the burden is on the lender to prove consideration. If an entry in the accounts of a certain sum "paid in cash" is to be presumptive evidence that that sum was cash (and not past interest), this rule of law will be reversed. And it will be very hard for the borrower to bring any rebutting evidence except unreliable oral evidence. At present we attach no value to an entry in a bond saying "Rs. 200 paid in cash before the Sub-Registrar". The question is whether we could attach much more value to an entry in the account book. I think a little more, but not so very much. It may be said that the account book entry will have the thumb-mark of the borrower; but so does the bond! All the same, if regular accounts are prescribed and found properly kept, the Court will give some weight to them. How much weight must depend on the

circumstances of each case. No doubt the result of each case will depend on a kind of guess-work, as it does now. But no other method seems to be possible. When we have it as a known fact that persons, wanting to borrow money, will put their names to *anything*, there can be no system invented which is sure to lead to the ascertainment of the truth. This is not only the case with regard to agriculturists. Persons of far higher position sometimes sign a bond admitting receipt of (say) Rs. 1,000 when really they have only got a bit more than half of that and the rest is future interest.

Much may obviously be said against a system of trying cases by conjecture. It is opposed to all the copy-book maxims, no doubt. But as it is the only way, we have to do it. I grant that it is never possible to find out the whole truth. But, in more cases than not, a sort of rough justice is done, which is better than no justice.

I do not see that our present system "puts a premium on dishonesty". It merely does not stop it. There was just as much dishonesty before the Act was introduced, the only difference being that then the agriculturist had no chance and now he has some. No system can be devised which would stop perjury in Civil Courts, so long as fools and knaves exist. There is as much perjury in suits not tried under the Dekkhan Agriculturists' Relief Act.

There is no necessity to enact anything about presumptions being raised by account entries of payments made by an agriculturist-debtor. In any case the burden of proof is on him to show that he has made the payment; and if he can show an entry in his creditor's accounts, he is sure to succeed in 99 cases out of 100.

On the whole I think that a system of compulsory accounts will be good both for debtors and for fairly honest lenders. And it will put a spoke in the wheel of the more exacting savkars. At present we often ask for accounts and get none, as the lender (really having them) pretends to have none. Under the proposed system he will have to produce some; and a good many people, who do not scruple to swear falsely in words, are not so ready to keep false accounts for special use in Courts. They hesitate partly because according to their ideas forgery is a more serious matter than perjury and partly because keeping false accounts for use in Courts means keeping true accounts for their own use, and then there would be a risk of the true accounts being found out and shown up, in which case they would have to go to prison.

I do not recommend a system of licenses to savkars. It would be impossible to find out which are fit to have a license. Also this might lead to the diminution in number of money-lenders and to a consequent rise in the rate of interest.

I approve of the inspection of lenders' accounts and borrowers' books by Assistant Collectors.

Council Hall, Poona, dated the 5th August 1912.

From—The Honourable Mr. S. R. Arthur, on special duty;

To—C. C. Boyd, Esq., I.C.S., District Judge, Poona.

I have the honour to acknowledge with thanks receipt of your letter No. 1464 of the 23rd ultimo regarding the proposed system of duplicate account keeping by money-lenders.

2. As regards the totally illiterate money-lender, whom you propose to exclude, the following considerations occur to me:—

(1) The proportion of illiterate to literate money-lenders is small.

(2) Of that proportion there are some whose transactions are on such a scale that they keep a karkun to write their accounts.

(3) The remainder have to get their bonds written and can presumably get their accounts written too. If the transactions are small the labour of writing ledger and pass-book will be small too. Writing is cheap in India, and the savkar can get his accounts written for a small consideration.

(4) In the whole country there are few villages which do not contain a single literate person, and such villages are unlikely to contain many savkars who would have to go to Court to obtain payment of their debts.

I would ask whether it is worth while for the sake of this very small minority—

(1) to lose uniformity of system;

(2) to open the door to benami transactions and false pleas of illiteracy;

(3) to encourage illiteracy among a class for the proper conduct of whose business writing is essential.

3. Is it not reasonable for the Legislature to lay down that it is the duty of money-lenders to keep accounts and to make their doing so a condition of their using the Courts to recover their debts?

4. I would request information whether you are so firmly convinced of the efficacy of the proposed new system of accounts that you would recommend its introduction generally throughout the Presidency, or whether you would introduce it tentatively in one or two districts.

5. If you advise its general introduction, I request your opinion whether the conditions in Kánara are so different to those in the rest of the Presidency that the district should be exempted from the system on the grounds—

(1) that there is no special money-lending class; that the same class both lend and borrow; that both are often illiterate and therefore go to Court on equal terms;

(2) that the people instead of being collected in villages live in scattered homesteads, and that the writing of accounts where money is lent would be a matter of great difficulty.

I address you specially on the subject of Kánara, since you know it probably better than any officer now serving in the Presidency, and I have before me a note of yours written in 1908 regarding the special local conditions.

No. 7-A.

Poona District Court, dated the 7th August 1912.

From—C. C. Boyd, Esq., I.C.S., District Judge, Poona;

To—The Honourable Mr. S. R. Arthur, I.C.S., on special duty, Poona.

Subject.—Proposed compulsory accounts for money-lenders.

I thank you for your letter No. 82 of 5th August 1912, with enclosures, which I return separately. On further consideration I agree that it would be better that accounts should be compulsory for all, whether literate or not. I do not think it would discourage loans by cultivators to each other. Simply the borrower would be made to pay the small cost of writing. I was inclined to think that the system might lead to undue interference by the writer with transactions between two simple peasants. But there is probably not much force in that objection. Sometimes it would happen that transactions like the following, between two illiterate persons, would not be at once entered in the accounts, *e. g.*:—

(1) Small payments of money or payments in kind by the debtor, made in the field or at some other place perhaps several miles away from any writer.

(2) Small advances made by a mortgagee in addition to the original loan and on the same security.

(3) Purchases on credit from an illiterate money-lender who is also a shopkeeper.

However (1) and (2) would in all probability be written up at the first opportunity and (3) would be unusual. In practice the entries would no doubt sometimes be

made a little after the actual payment. But that cannot be helped. No system can be quite perfect.

2. I again say that the entries in account should not be presumed to be correct. Perhaps we may be able to do that in 20 or 30 years, if creditors and debtors work well together and the debtor is not handicapped. But that is very far from being the case yet. Still, as I said, the compulsory accounts will be very useful indeed.

3. I strongly approve of your suggestion that the debtor should have a counterpart book. One of the chief grievances of that class is that they do not know what the lender has written in his accounts, and they cannot find out. In future they will almost always be able to know, if they get their books written up and get a friend to read them out. This is a matter of very great importance. It will only very rarely happen that the lender's book will differ from that of the borrower. That trick might occasionally be tried, but would be very risky; for the lender will be responsible for the contents of the borrower's book—and if the two books differ, the lender might be prosecuted for fabricating false evidence.

4. I agree with a suggestion, which you mentioned in conversation, that a *hath pavati* should be given for payments when the borrower fails to bring his book.

5. I am very strongly against the idea of trying the system for a short time in a few talukas or districts. If the thing is right (which I firmly believe), it should be done. The Courts are quite tired of people who refuse to bring accounts and want findings of fact based on no solid foundation. We shall never make progress if we introduce reforms timidly and tentatively. Moreover, it needs a most expensive special establishment to find out in detail the results of a trial: the ordinary District Officers would have no time. In far more important matters we do not introduce reforms tentatively!

6. I have separately written to you on the subject of Kánara district, saying that compulsory accounts are not suitable for that district, which should in my opinion be exempted from the operation of any part of the Dekkhan Agriculturists' Relief Act.

7. I would also add that I agree with the Honourable Mr. Justice Heaton that thumb-impressions in the accounts should not be compulsory. A badly-taken impression is of no use and may lead to trouble.

8. I would suggest that the system should not apply to very small cash loans without security, such as can be recovered in the Court of a village munsif, *i. e.*, you might exempt loans of Rs. 10 and less, if not more than two such are made in a month by the same lender to the same borrower. At present owing to section 22 of the Act it is difficult to recover from an agriculturist any unsecured debt. And if every trifling loan (including small sales from a shop) cannot be recovered without getting an account book (and so on), such loans may be unduly discouraged.

9. In fact it may be doubted whether the system should be applied at all to unsecured loans in any place where section 22 is in force. Simple money-bonds by agriculturists are very rare; but it is not so unusual for a small illiterate shopkeeper (say, an old woman) to supply articles on credit to agriculturists. I am inclined to think that the new law should be carefully framed so as to omit such cases.

10. I would also suggest that persons, who have bought land from agriculturists, and sue for possession or rent (or are sued under section 10-A for redemption), should be bound to produce accounts. Otherwise, unless he knows that accounts are necessary in such a case, a money-lender may suffer undue loss in a case like the following. A sávkar sues for possession on a sale deed. The cultivator replies that it was really a mortgage. The Court enquires under section 10-A and finds it was a mortgage. Then the Court converts the suit into a redemption suit and calls on the lender for his accounts, showing what was lent. The savkar, unless the law is clear, would reply 'I would have produced accounts if it had been a loan. But I say it was a purchase". Although he has been untruthful, still he should be enabled to recover his money. If he knows beforehand that sales also must be supported by accounts, then he will keep an account and can recover what the Court finds to be due.

No. 8.

Belgaum, dated the 30th July 1912.

From—R. C. Brown, Esq., I.C.S., Collector of Belgaum ;

To—The Honourable Mr. S. R. Arthur, on special duty, Poona.

With reference to your letter No. 54, dated $\frac{\text{29th June}}{\text{3rd July}}$ 1912, I have the honour to state as under :—

1. I have consulted Mr. Mackie, Assistant Collector, Rao Bahadur Artal, District Deputy Collector, and Mr. Manerikar, Government Public Prosecutor, Belgaum, and all agree with my view that the proposed duplicate system of accounts is unobjectionable and should be brought into force.

2. My opinion and views on the details of the system, agreed in also on the whole by those consulted, are as follows :—

(*a*) The savkar must not be allowed to keep the rayats' account ever; the rayat must always have it in his own possession.

(*b*) Entry at the time of transaction must be made compulsory.

(*c*) The savkar must keep also a general day-book and ledger of these transactions, in case true copies are wanted (supposing an account book is lost, etc); and also as a most useful test of accuracy by referring to these general accounts of the savkar.

(*d*) A witness on the rayat's behalf should attest the transaction and entry in the accounts and his evidence should be allowed in the Court—no other evidence should be allowed.

(*e*) Imprisonment should be the penalty prescribed for failure to comply with the law on this point of accounts; not fines only which will not deter from evasion.

(*f*) The books must be supplied by Government and paged and sealed.

3. The rayats with their Government revenue receipt books are well used to the procedure now proposed and just as they are very much alive to the necessity for immediate and accurate entry of their payments in those receipt books so they will at once take to the proposed safeguard of their interests. In this point the rayats have advanced greatly since the date of the Dekkhan Agriculturists' Relief Act. With the Ratnágiri Khots also, it is understood, in assistance suits the rayat must produce a receipt for his payments and without it the decision goes against him. As in these Khot receipts too the Assistant Collector and Mamlatdars should examine and check and where necessary correct the accounts.

4. The accounts should be conclusive evidence in the Court and no oral evidence should be admitted except the witness attesting on the rayat's behalf.

5. The proposal to license and register money-lenders is not supported by myself or those I have consulted.

No. 9.

Belgaum, dated the 29th July 1912.

From – L. C. Crump, Esq., I.C.S., District Judge, Belgaum ;

To— The Honourable Mr. S. R. Arthur, on special duty.

I have the honour to offer the following remarks on the subject dealt with in your No. 54, dated 29th June 1912.

2. In the first place, there can be no doubt that, generally speaking, it would be an excellent thing if a system of duplicate accounts could be enforced. Apart from any questions which might arise in the Courts, the existence of a system

such as is contemplated must tend to fair dealing and to the avoidance of disputes between debtor and creditor. I am therefore entirely in sympathy with the proposal. The difficulty in my opinion is (1) to enforce the system, (2) to secure that the accounts shall be honestly kept. As to the contents of the accounts, it is unnecessary to say anything; there is no difficulty in devising the necessary books.

3. It is useless to prescribe a system unless it can be enforced. The past history of Chapter IX of the Act shows that. It also shows that it is useless to rely on the agriculturist to enforce the law in his own interest. If the system is to succeed, it is necessary to devise some method which shall be efficacious to compel the money-lender to keep such accounts. The most obvious method is to provide for inspection. In order to do this, it would seem inevitable that money-lenders should be registered. Without such registration it would be impossible for an inspecting officer to know whether a given person was or was not compelled to keep accounts on the prescribed system.

4. Now on the whole I am not in favour of the registration of money-lenders. It would in my opinion be undesirable to include within that term any person who makes a loan on interest, and, short of doing this, it is difficult to devise a definition which will work satisfactorily. It would of course be possible to frame an inconclusive definition on the lines of the English precedent and to leave it to the Courts to decide on doubtful cases, but having regard to the universal practice of money-lending in this country, the infinite variety of cases that would arise would be very difficult to deal with in practice. Without registration the method of inspection appears to me to be impracticable, as it is obviously undesirable to make the accounts of all money-lenders open to inspection, and it would in practice be impossible to inspect them all.

5. The next method is to attach a penalty, and this could be done, but the same difficulty will arise as has been experienced in the working of Chapter IX. Still the enactment of a penalty may not be without effect, and if it be made the duty of the Courts to see to its enforcement in cases coming to their knowledge, the effect will be very considerable.

6. The methods of enforcing the system suggested in your letter are indirect. It is sought to make it to the interest of the parties to see that the accounts are kept as desired. The first suggestion is that no plaint shall be entertained without a copy of the account, and that the accounts themselves must be produced. I heartily endorse this suggestion, and I would further add that in all cases in which an account has to be taken in accordance with the provisions of section 13 of the Act, a statement shall accompany the plaint showing how the amount sought to be recovered is due under that section on the basis of the accounts produced. A direction of the above nature would compel a money-lender to keep the prescribed accounts with his agriculturist clients at the risk of failing to recover. This would not, however, compel him to furnish duplicates, and it is in this matter that the scheme appears to me to present the most serious difficulties.

7. The second suggestion in your letter is that duplicates of the accounts should be kept by the debtors, but the only suggestion as to enforcing this is that "No evidence of payment in kind or cash should be admitted after the expiry of 30 days from the date of the alleged payment". Where both parties are honest the system requires no enforcement. Let us suppose then that we have a dishonest money-lender and an honest agriculturist. To take the simplest case first: If the agriculturist pays Rs. 50 and the money-lender makes no entry in his accounts and gives no duplicate, will the agriculturist do anything? Look at the history of Chapter IX. Why should he do more now than he did under that chapter? Suppose, however, he decides to act. To whom is he to refer? And what enquiry is to be held? And what is likely to be the result? What evidence is there likely to be in such a case? I cannot answer these questions to my own satisfaction. Now take the case of the honest money-lender and the dishonest debtor. This latter person is far more likely to act than his honest confrere. Suppose such a one comes forward and says, "Fifteen days ago I paid Rs. 50 to my savkar", and he has not entered it in my account. The savkar's account does not show any entry. What is to be done? It would of course be possible to say

that in either case such-and-such an officer shall hold an enquiry and decide the point, but practically the system would be no more workable than Chapter IX of the Act. Again, it is impossible to devise any system which shall be proof against fraud. I cannot pretend to be an expert in fraudulent devices, and yet I can suggest at least one. Such is good ground for inferring that the dishonest money-lender will devise ten. Suppose Rs. 100 is paid. The money-lender enters Rs. 50 in *his* accounts and Rs. 50 in the agriculturist's account: the latter is illiterate. The money-lender says, "I have made a mistake and only entered Rs. 50 in your book", and thereupon erases the Rs. 50 in the agriculturist's account and writes Rs. 100 instead. An illiterate debtor would probably be satisfied. Later on the case comes into Court: One account shows Rs. 50: the other Rs. 100. Each party accuses the other of tampering with the account. The converse case where the account actually is altered by the debtor leads to the same difficulty. Where is the conclusive evidence? These are the tricks that will be played, and others like them. In the case put the book being in the possession of the agriculturist, it will certainly appear that he has altered an entry of Rs. 50 to an entry of Rs. 100 for his own benefit. Until it is shown that the system can be made proof against fraud, and capable of enforcement, I am most emphatically opposed to any suggestion that these accounts should have conclusive effect against anybody, or indeed that they should have any higher evidentiary value than would attach to them under the existing law. To make these accounts conclusive proof would even shut out proof of admitted errors. It would also furnish a ready means of shutting out any enquiry into the past history of a transaction. The creditor would induce the debtor to settle the amount due, and would enter that amount as a cash transaction. It is probable that the debtor in many cases would not object until it was too late. I most strongly deprecate the attempt to lay down any new rule of evidence. It is impossible to foresee all the questions that may arise for decision, and most inexpedient to fetter the Courts as to the weight to be given to the accounts in any individual case. Entries duly signed by the debtor would ordinarily possess a high evidentiary value, especially if corroborated by proof that duplicates were given to the debtor and accepted without controversy. I may perhaps add that the instance cited in your letter is admittedly that of an honest lender and not therefore one on which an argument applicable to all cases can be safely based. I would also suggest for your consideration whether the logical conclusion of the arguments advanced in paragraphs 8 and 9 of your letter is not that the Act should be repealed rather than that the accounts should be made conclusive proof.

8. Though it does not appear to me possible to ensure that duplicate accounts shall be kept without a system of registration coupled with an inspection such as obtains in the case of the payers of land revenue, nevertheless that regular accounts should be kept is an end well worth attaining, and I would endeavour as far as possible to compel the creditor to give copies to the debtor. To do this there should be a penalty as stated above, and further it should be expressly enacted that a Court should have power to refuse relief if it finds that copies have not been given, and to direct a prosecution in suitable cases. I believe that much good would be done by a system on these lines. It would also be necessary to specifically enact that in cases where the mortgagee is in possession he shall keep accounts of a similar nature, and similarly furnish copies showing the profits received from time to time, whether the mortgagor is or is not his tenant. This would meet one of the commonest difficulties experienced in taking accounts under the Act. It may of course be urged that a mortgagee in possession is bound to keep accounts [section 76 (*g*) of the Transfer of Property Act] and to give the mortgagor such information as he desires, but it would be well to make the form of accounts more specific and to attach a penalty. The accounts would thus cover practically all the transactions falling within the scope of section 12 of the Act.

9. A further question arises, *viz.*, to what persons are the proposed provisions of law to apply? Generally speaking, there is no hardship in compelling persons who deal in money to keep proper accounts, but here as elsewhere there are many cases which present difficulty. These will principally be the cases of illiterate persons or persons who make occasional loans. If such persons are included, the hardship is great. If they are excluded, the law will be evaded with ease in a country where "benami" transactions flourish. The latter evil is the

lesser of the two. The person to be affected by the proposed legislation would be the person who makes a business of dealing in money, or habitually deals in money. A rough sketch of the kind of legislation that would be necessary is appended as the readiest means of explaining what I advocate.

10. If forms of accounts are prescribed and rules laid down for their authentication and for the giving of copies, it would not be necessary for Government to provide books paged and sealed as is suggested in paragraph 13 of your letter.

11. It is necessary to consider the question of past transactions. The system cannot apply to these in so far as they are anterior in date to the proposed legislation. It is, however, necessary that it should apply to future payments or receipt with reference to such transactions. If not, it will always be made to appear that the first transaction is older than the new law. It is probable that in many cases the old accounts will be closed, and the total settled to be due will appear in the new accounts as a new cash loan. In the face of the accounts, which involve an admission by the debtor that the transaction is as represented, it will be difficult for the Courts to go behind the entry, but the hardship involved will be more than outweighed by the benefits of full and clear accounts open to inspection by the debtor.

APPENDIX.

1. The provisions of this chapter shall apply to any person who habitually deals in money in all cases where such person receives from any agriculturist or pays to any agriculturist any sum of money by way of a loan, or in liquidation of a loan.

2. Any person receiving or paying any such sum of money shall enter such payment or receipt in an account in the name of the agriculturist receiving or paying the said sum.

3. Any person as aforesaid shall enter every such loan or payment in a true copy of such account. Such true copy shall be kept in the custody of the agriculturist in whose name it stands, and no payment shall be made to or received from an agriculturist without the production of the copy in his custody.

4. Any person, who by right of mortgagee is in possession of land belonging to any agriculturist, shall keep in such form as Government may from time to time prescribe an account of the profits received from such land, whether the mortgagor is or is not in physical possession of the land as a tenant of such person.

5. Every such mortgagee shall give to the mortgagor at such times as Government may prescribe a true copy of such account.

6. Penal clause.

7. No Civil Court shall receive or register any plaint, etc.

8. Any Civil Court hearing any suit of the nature described in the last section, may dismiss such suit, if such Court is satisfied that the provisions of sections have not been complied with by the plaintiff.

9. Any such Court may in any suit coming before it direct the prosecution of any person, who in the opinion of such Court has not complied with the provisions of sections

10. Government may make rules prescribing—

(i) The forms of accounts to be kept for the purposes of this chapter.

(ii) The manner in which such accounts shall be authenticated.

(iii) The manner in which copies of such accounts shall be given to agriculturists and the form of such copies.

(iv) Generally for the purpose of carrying out the provisions of this chapter.

Camp Bijápur, dated the 20th July 1912.

From—D. A. Idgunji, Esq., Inspecting Subordinate Judge, Belgaum, etc.;

To—The Honourable Mr. S. R. Arthur, on special duty.

I beg to submit my views on the proposal in paragraph 5 of your letter No. 34, dated 29th June 1912, as per your directions.

2. The duplicate system of accounts will lead to the results anticipated in paragraph 6. It will also meet with the approval of the savkars, whether they are honest or not. A resort to dishonest practices on their part will not be much hampered by the system. If they can successfully induce a debtor to pass a bond for Rs. 200, when the money actually advanced is Rs. 100 or so, they will not fail of success in securing entries similarly detached from the actual state of the transactions, in the double accounts.

3. The fear that the amount of the claim will be reduced in an inquiry by the Court under the Dekkhan Agriculturists' Relief Act, is not the sole cause of the exaggerated items appearing in bonds. The practice obtained before the enactment of the Act, and it may be traced to the desire of the savkar to get as large returns for his advances as he possibly can. The chief frauds enumerated by the Commission appointed in 1875 to inquire into the condition of agriculturists are:—(1) forging bonds, (2) withholding the consideration mentioned in the bond, (3) obtaining new bonds in satisfaction of old bonds and of decrees and nevertheless enforcing the latter, (4) not giving credit for payments, (5) refusing to explain or wrongly representing their accounts to debtors.

In the Small Cause Courts in Bombay are to be seen instances of similar practices on the part of the Marwadi money-lenders; and the provisions of the Act have never been in force there. An assurance that the items in the double accounts will be decreed to the savkars, will not succeed in weaning such of them as are at present dishonest from their malpractices.

4. To give to accounts any higher evidentiary value than that prescribed for them in section 34 of the Evidence Act, would be to make accounts more stringent to the class needing special protection than they are to the general public, who are not in want of such protection.

5. The provisions as to the inquiry as per sections 12 and 13 assume that there exists a class of persons who are to be protected from their folly. If such a class does exist, the double system of accounts with its conclusive or even presumptive proof will undermine the important concessions made to it by way of relief in sections 12 and 13. The duty of inquiry is imposed on the Court in imperative terms. It is to be discharged even if the party for whose benefit it was created, waives the privilege (*Cf.* Patlu *v.* Naru, 7 Bombay Law Reporter, page 688 at page 690). With the double system of accounts, the inquiry will only be an inspection of the accounts. It will be like the present Conciliators' kabulayats—a means of evading sections 12 and 13. The result will be that what was given by one hand to this unfortunate class will be taken away by the other.

6. The considerations urged in paragraph 9 of your letter point out the inadvisability of making the Act permanently applicable to any particular class and of keeping the class under permanent tutelage, even after the disappearance of the necessity for such protection. The agriculturist, who from his position and surroundings, ceases to be subservient to the money-lender, must also cease to have the benefit of the provisions of the Act.

7. It is, however, necessary to compel savkars to keep accounts and to make it clear that the duty of giving the Court such information as is necessary to make an inquiry under section 12 lies upon the creditor. It is also necessary to teach the agriculturists to have everything entered in their accounts.

8. I would therefore support the first portion of the proposal in paragraph 5 of your letter:—

> "Every money-lender should keep a separate account, in duplicate, of his dealings with each agriculturist client. All transactions between them should be entered when they take place, in both copies and attested by the signature (or the thumb-impression, if illiterate), of both parties. One of these

copies should remain with the money-lender and one with the client concerned. No plaint should be entertained by a Court without an extract from the account being attached to it, and the account itself must be produced at the time of hearing."

The proposal in the last three sentences does not take adequate measure of the fact that the class for whom the legislation is intended is admittedly a victim to the malpractices of the savkars summed up by the Commissioners in 1875.

9. The provision that a plaint filed without an extract from the accounts shall be rejected by the Court will serve all the purposes, which can at present be aimed at consistently with the admitted condition of the class needing special relief.

10. The accounts may be kept in books paged and sealed and issued from a Government office; and an inspection of a certain number of rayats' accounts with savkars by Assistant Collectors and Mamlatdars at the time of village inspection will prove further incentives to have all transactions entered in the accounts.

11. The proposal in paragraph 14 as to a system of registration and license of money-lenders will prove a great hind ance to the every day transactions of rural life. In the mofussil it is almost every man who has spare cash that lends it out and that preferably to an agriculturist, as he is the needy man at hand. Again, a license will only be necessary before lending money to a particular class of persons. Whether the borrower comes under this class or not will often be a question at issue. The lender may a lvance money on the *bonâ fide* belief that the borrower does not fall under the category. These considerations serve to show that the system of licenses will not be worth the trouble it will involve, so far as net results are concerned.

(Through the District Judge, Belgaum.)

Belgaum District Court, dated the 29th July 1912.

Forwarded with compliments.

L. C. CRUMP,
District Judge.

No. 10.

Note by Mr. L. J. Mountford, Collector of Sátára, on the Honourable Mr. Arthur's letter No. 54, dated 4th July 1912.

As Manager of the Encumbered Estates, Sind, I proposed a Commercial Code to safeguard the rayat. I have given the details in my pamphlet (pages 48 and 49*). The object was to prevent interpolations and fraud. I did not suggest the account book of the rayat, because in Sind the rayat never kept his receipt book, was ignorant of his transactions and was careless and illiterate to a degree. There was no Patil system there, nor were there villages where, as in the Presidency proper, we generally find a certain number of shrewd and sufficiently literate cultivators, who can assist their ignorant brethren in understanding the accuracy of what is written. For several reasons I did not consider that the rayats' account books would be of much assistance.

I consider after twelve years in Sind and eight years in the Presidency, that the rayat in these parts is less careless and less illiterate than the Sindhi.

With the proposals I deal seriatim.

Duplicate accounts.—I can see nothing that can possibly be lost by the system. If a man declines to have his debts and payments written up on his own book, he would equally be unable to prove such debts and credits, if he had no book.

---

* Criticised adversely in some parts in Government Resolution No. 7887, Revenue Department, dated the 10th November 1902.

If the creditor is dishonest and persuades a man not to have his account written up, he will be able to swindle him just as much as if no accounts were kept at all. But the tendency must be where there are several money-lenders in a village for the kunbis to go to the honest or the less dishonest man. One or two suits on debts not properly due, where money had been paid and not acknowledged, would be common talk in a village and the dishonest savkar would be ostracised. Where there is only one savkar in a village, and that a dishonest man, the villagers will, of course, be at his mercy, but in a Court a rayat or defendant could claim that he had paid and no entry had been made and he could adduce evidence of others to show they also had made payments, and that the savkar had refused to enter up such payments, and the savkar's evidence would be discredited.

In whatever way, then, the proposal is viewed, it appears that the natural tendency will be for these rayats' accounts to be eventually, if not at first, duly written up.

Moreover, these accounts will have a most valuable educative value. The rayat, if he fails to prove a repayment now, considers he fails through lack of oral evidence, a thing he does not understand He considers his oral evidence has failed through some technicality of the law; and he has to accept defeat. But when the Court asks him, under the new system, to produce his account book, he will know that he has failed, *because* he has not had the repayment written up therein; and he will take pretty good care to tell his friends in the village chavdi, where all such cases are discussed, why he failed, and he will not be caught again in this way, nor will the other villagers, when they hear of the importance attached to their account books.

Whether or not the limit of 30 days is enough is debateable. Payments in kind are made to a savkar in several villages, and he is away for some time collecting his debts in those villages, and he can put off a payer, saying he has not his book with him and can then go off to another village. We know how easily a debtor can be put off; and I think that for the present we should have no limit; if we do, the savkar, who will learn that limit at once, will defraud the rayat who will not learn that limit at once, and is not in a position to enforce it. The savkar has always shown great celerity in conforming to and in understanding our laws and limitations; it is part of his trade. The rayat has never shown any aptitude in understanding our law; witness the Dekkhan Agriculturists' Relief Act, which gives him the power to prosecute a savkar who refuses him a receipt; yet receipts are refused daily and the rayat never prosecutes.

We have safeguarded the rayat for many years and it is now necessary to educate him in keeping accounts. A start must be made. He cannot learn all at once, and these accounts cannot be a pronounced success all at once. But is this to be a reason for never introducing such a system, which will eventually do more to keep him from poverty than any special law? Always and ever assuming of course that the Courts will encourage such accounts by not allowing a savkar to produce his books as "regularly kept," unless the khata is produced at the same time. Should the rayat suppress his khata, the savkar can prove easily enough he gave him one, as the Patil will have to attest the book of the rayat at the end of the year; and he and the villagers will know well enough whether such an account book existed.

Your paragraph 10.

I do not think these accounts should be considered conclusive proof. I have dealt with this in my brief note on the legal aspect of these duplicate accounts.

(2 I consider that these accounts should be obligatory on all money-lenders. It is only too common for a money-lender to say he does not keep accounts, or that he does not keep a day-book. Many Banyas in Sind suppressed the day-book and falsely denied keeping it. I would not allow them to plead illiteracy.

(3) I consider the accounts should be paged* and sealed in the Mamlatdar's Office to prevent interpolation. They should be closed at the end of each year, and the balance attested by the debtor and the Patil and Kulkarni. Examination

* This suggestion was adopted by Government in the Government Resolution under reference (paragraph 1).

of a few of these accounts by District Officers would be very simple and effective. I may add that they would also assist us in income-tax enquiries.

Finally, I consider that such "pass-books" will considerably reduce litigation and also discontent. A rayat is quite capable of honestly believing he had paid more than he has, and he is prepared to fight. This pass-book if properly kept would prevent any mistake and ill-feeling.

3. Legal aspect of *duplicate* account system.

Any improvement in the system of accounts kept by the money-lender will tend to facilitate the work of the Courts.

Section 34 of the Evidence Act lays down that entries in books of account regularly kept in the course of business are relevant, but such statements shall not be sufficient evidence to charge any person with liability.

It has even been held that the fact that a transaction does not occur in books regularly kept, is not relevant to prove that a transaction did not take place (I. L. R., 10 Calcutta, 1024). I do not therefore consider that such accounts can at any rate at present be conclusive proof of the matter at issue.

(2) I consider that too much reliance is placed by some Civil Court Judges on the books produced before them, which are not and can by no stretch of imagination be called books of account regularly kept in the course of business. They are most irregularly kept. This should be pointed out for their guidance by the High Courts.

(3) The system proposed comprises a double set of accounts, one acting as a check on the other. The savkar will keep his books and the rayat will keep his, in which the savkar will enter up every credit and debt. If these two do not tally, they can be rejected by the Court as not "regularly kept". If they tally, they will appear to be regularly kept, and will be of the utmost value to the Judge.

(4) It would be well if the High Courts would lay down a definition for guidance of Courts as to what is "regularly kept" and what is not. If it could be laid down that a day-book must be kept and duly totalled every month and the totals carried on to prevent interpolations and finally closed at the end of the year, a great deal of fraud would be prevented. The High Courts might go further and lay down that as the native account book is unpaged, contains blank pages in and out of its accounts with various debtors and is therefore capable of being manipulated to any extent, only such books should be used as are properly paged and certified by the Mamlatdar.

In Sind I found spurious accounts written up on these blank pages. To prove a debt of Rs. 500. shown as cash in the day-book, which was really a balance of old debts, all a Banya had to do was to turn up an old ledger of that year in which many different debtors' accounts were written up, find a blank page among such accounts (and such ledgers were full of blank pages) and write up a false account, signed by A B (his mark), attested by a neighbouring Banya. Such cases were common; and why not? The manipulation was simplicity itself.

At the end of each year the account should be closed and signed and also attested by the Patil and Kulkarni. No honest money-lender would object to this, and no debtor could object to signing a true account, especially when supported by his own khata, which should be similarly closed and attested.

The question of attaching a copy of the account with the plaint, which I always insisted on as Manager, is one for the High Court by their executive orders. The proposal is in consonance with ordinary practice so far as the creditor's account is concerned. The rayat's account might not be so easy to attach. He is fighting the case and might wish to keep it back until the case came into Court.

L. J. MOUNTFORD,
Collector of Sátára.

27th July 1912.

Koregaon, dated the 26th July 1912.

From—The Mamlatdar of Koregaon;

To—The Collector of Sátára.

As directed by the Agricultural Commission in Sátára, I beg respectfully to report on the points raised in the Commission's letter No. 54, dated the 29th June 1912, to all the Collectors as under:—

The system of entering duplicate accounts by savkars, as stated in paragraph 5 of the letter No. 54, dated 29th June 1912, from the Honourable Mr. S. R. Arthur, is no doubt quite feasible and would result in reducing the work of the Courts in taking history, etc., as noted in paragraph 6 to paragraph 9 of the same letter, but this would be conveniently practicable in case of large firms, such as that of the late Rao Bahadur Appasaheb of Sholápur.

But this business of money-lending is not now confined to any such large firms alone; it has very much expanded its scope and it is now seen that any person not by any means a savkar in any sense of the term is seen anxious to invest his savings, however small, to ensure certain amount of interest so that there are practically petty savkars anywhere and everywhere even among agriculturists and ordinary labourers also. Many of such persons are hardly able to read or write, so that any account-keeping at all among them is out of question.

Such savkars and their debtors are, however, very careful not to have any occasion to go to the Court at all, and their transactions are carried on peacefully and amicably all the while. These cannot by any means be included in the category of money-lending prices at all, so that the question of duplicate accounts keeping does not arise in their case.

As to the other honest savkars, the system of double accounts would be hailed with delight by these men and would readily be accepted so as to save all future troubles and uncertainties in securing a due return of their sums advanced.

To begin with however, the duplicate accounts should be regarded as presumptive evidence and not conclusive proof and should not be made obligatory on illiterate savkars.

To make it obligatory on savkars to have these duplicate accounts in books paged and sealed and issued from a Government office would not be expedient, as so doing would perhaps be deemed to be fettering the savkars unnecessarily; attested entries in the savkars' own books should generally be sufficient to begin with.

Registration and licensing of money-lenders, if enforced, would act very harshly on the ordinary savkars among the agriculturists or the labouring classes, as it would tend possibly to stop all minor transactions among such people, and the tendency to invest all savings with a view to secure interest thereon might possibly be checked, as such people would not care to give for any such licenses at all and would revert to the old system of hoarding their savings and burying them down in earth in their own houses.

Sátára, 27th July 1912.

Mr. Gune, Mamlatdar of Koregaon's opinion forwarded with compliments to the Honourable Mr. S. R. Arthur, I.C.S., on special duty, Poona.

Sátára, 27th July 1912.

L. J. MOUNTFORD,
Collector.

No. 11.

District Court, Sátára, dated the 27th July 1912.

From—W. T. W. Baker, Esq., I.C.S., Acting District Judge, Sátára;

To—The Honourable Mr. S. R. Arthur, I.C.S., Special Officer, Dekkhan Agriculturists' Relief Act Commission, Poona.

With reference to your No. 54 of 29th June 1912, I have the honour to state that I am in favour of the proposal to make it compulsory for money-lenders to keep accounts in duplicate, one copy to remain with the debtor. The unsatisfactory nature of the present practice is generally recognized, and I need say nothing about it.

I do not anticipate any difficulty with illiterate creditors, as some one must necessarily write the bond under present conditions and the same person can write the accounts.

With regard to illiterate debtors, they will presumably get some one to read the entries in their books for them, and though at first there may be some difficulty when the value of the system is recognized, debtors will take care to see that their payments are entered properly.

I must remark that the taking of thumb-impressions in villages is not altogether satisfactory, and the attestation of entries seems desirable. The provision of paged and sealed books would prevent the interpolation of pages, but would not prevent the omission of entries. I think a penal clause will be necessary to provide for cases of wilful omission to enter payments.

As to the treating of such entries as conclusive proof, time must be given to allow the system to become understood. When debtors find that the entries are regarded as strong proof, they will take care that their payments are entered, but this will take some time.

At first therefore the entries should be treated as strong presumptive proof, and after a time the system may be brought into force into its entirety.

With regard to the suggestion in paragraph 14 of your letter that a system of registration of money-lenders should be introduced, I am not in favour of this.

I do not think this would prevent unregistered persons from lending money and would lead to fraud. If the number of money-lenders were largely reduced, a kind of monopoly would be created, which would be very undesirable.

In some villages, if there were few or no licensed money-lenders, the agriculturists would be driven to borrow on very hard terms or to go to unlicensed money-lenders who, knowing they could not recover their money legally, would recover it illegally.

A man who wants to borrow will do so, whether a licensed money-lender is available or not, and I do not think it is desirable to narrow his facilities for doing so.

One Subordinate Judge has suggested that payments to the agriculturists should be made through banks. This is at present impracticable, because there are not enough banks. I believe that the ultimate salvation of the agriculturist will be worked out to a large extent through Co-operative Credit Societies, but it is not yet practicable to substitute their agency for that of the savkar.

Another Subordinate Judge proposes that the creditor should be compelled to furnish a statement of account by an open letter through the Post Office. This does not in any way assist in determining the genuineness of the account.

The Subordinate Judge of Rahimatpur reports that he has discussed the proposed system of duplicate accounts with some money-lenders and agriculturists resident there, and they are all in favour of it.

Rahimatpur, dated the 25th July 1912.

From—V. R. Kulkarni, Esq., B.A., LL.B., Subordinate Judge, Rahimatpur, Khatáo and Dahiwádi;

To—The Honourable Mr. S. R. Arthur, I.C.S., on special duty, Poona.

With reference to your circular No. 54, dated the 29th June 1912, regarding the proposed system of duplicate accounts, I have the honour to say that I am

entirely in favour of the proposed system and that I generally agree with the views, stated in detail, in the said circular.

2. One of the main objects in introducing the Dekkhan Agriculturists' Relief Act was to provide safeguards against creditors committing frauds in their dealings with agriculturist-debtors, *e.g.*, not paying the whole or part of the consideration, not giving credit for payments received, etc., and against agriculturist-debtors falsely denying the receipt of consideration, alleging false payments, etc. For this purpose Chapter IX was enacted. But the provisions of the said chapter have practically become a dead letter, as observed in the said circular, and in fact there is no effective check on the various kinds of frauds practised every day, both by creditors and agriculturist-debtors. In this unnatural state of things it is painful to observe that he, who can perjure hard and can get some unscrupulous men to support him in his perjury, generally wins the day. The balance is generally in favour of the creditor—the stronger party.

3. It has been noticed that though the Dekkhan Agriculturists' Relief Act has bettered the position of an agriculturist to an appreciable extent, it has had decidedly a demoralising effect upon him. He does not feel the least compunction in alleging false pleas and to get men to swear falsely in his favour. The voice of the public, among whom he moves, does not act as a check in this connection, as the said public are generally in the same predicament as himself. The same is the case with the money-lending class.

4. Thus, though the Act has made an agriculturist materially solvent to some extent, it has made him morally insolvent. In fact the present agriculturist is like a spoilt child.

5. In the interests of the agriculturist himself, for whose benefit the Act was specially intended, and in the interests of the society in general, it is high time that some effective measure should be proposed in this connection, and from experience I have had in several districts, I can think of no better remedy than the one suggested by the circular.

6. No doubt, there are many money-lenders (mostly agriculturists themselves) who are illiterate, and it is said that the proposed system will go rather hard, but I find that these men too are not opposed to the said system. If they can manage to get their bonds, receipts, etc., written for them by others, they can equally manage to get the entries in the proposed pass-books made for them by some writer. They can satisfy themselves as to the correctness of the said entries by referring to some other writer. There will not be the least difficulty in this connection.

7. The possible objections to the proposed system, from the point of view of an agriculturist, have been ably dealt with in the said circular. I have nothing to add to or to subtract from the remarks made in the said circular in this connection.

8. The proposed system will generally leave no loophole for dishonesty, either on the part of the creditors or on the part of the debtors. Both will understand their position better; when they will find that dishonesty does not pay, they are sure to grow honest, as a matter of necessity, especially when they see that they are not the losers, in the least, thereby.

9. I discussed this point with some leading money-lenders and agriculturists in this town. All of them, without a single dissenting voice, showed their approval of the proposed system. They say that some such system is badly wanted in the interests of all.

10. From what I have said above, it is clear that the proposed system should be made compulsory on all money-lenders, whether literate or illiterate. It will not be an easy task in many cases to ascertain whether a particular person is illiterate or not.

11. For the present in my opinion it will suffice if the duplicate accounts are kept in books prepared by the parties themselves. No doubt, it will be far better if the same are kept in books issued from a Government office. But the same should not be made compulsory at once. It may be made so after the people become generally familiar with the new system.

12. I do not think the proposed system of registration and license of money-lenders will work satisfactorily. Petty money-lenders and those who lend money to agriculturists not as a profession but only occasionally will be put to some hardship. If the system is to be introduced at all, the same should be made applicable only to those money-lenders who pay some income-tax to Government.

13. In my opinion the accounts to be kept under the new system should not be treated as conclusive, but only as strong presumptive evidence for some-time to come. Within a few years (say three years) sufficient statistics can be collected, which will enable one to decide one way or the other.

14. In short, I am strongly of opinion that the proposed system of duplicate accounts will put the relations between money-lending class and agriculturist-debtors on a better footing.

(Submitted through the District Judge, Sátára.)

District Court, Sátára, dated the 27th July 1912.

Forwarded with compliments.

.....

District Judge.

No. 12.

Opinion of Mr. J. L. Rieu, I.C.S.

Returned with compliments.

2. I do not think that in Sind the proposed system of compulsory accounts in duplicate would be desirable, or even practicable. The reasons against it are the general illiteracy of agriculturist-debtors and the existence, side by side, of two entirely different forms of script, the one being peculiar to the money-lending classes, while the other is that officially recognized and taught to the agriculturists.

3. So far as my limited experience of the Presidency goes, I am disposed to think that the proposed system is desirable and feasible, though as to the latter point there will necessarily be cases where its enforcement will be difficult. In view of this the proposed legislation should make provision for the individual exclusion of particular areas from its application.

4. I consider that the proposal that the duplicate accounts should be kept in books paged and sealed and issued gratis from a Government office is impracticable. The cost to Government would be prohibitive, and the compulsion to use such books would be a serious interference with the liberty of individuals. Harassing legislation of this sort is dangerous. The furthest I would be prepared to go is to give money-lenders the option of purchasing officially paged and sealed books from Government at cost price. The Civil Courts would no doubt soon give indications of the superior probative value which they attached to accounts kept in such books and thus afford a direct inducement to money-lenders to make general use of them in dealing with agriculturists.

5. After reading the opinions of Messrs. Crump and Boyd, I agree that it would be a mistake to make the accounts conclusive, or even presumptive, proof of the transactions to which they relate. They must have the ordinary evidential value of accounts regularly kept.

6. I think that the licensing of money-lenders, though perhaps theoretically desirable, is not a measure which can be advocated on grounds of expediency. Its enforcement would inevitably give rise to many serious practical difficulties, and would undoubtedly cause widespread popular discontent.

7. I do not approve of the proposed inspection of accounts by district officers. This is far too inquisitorial a proceeding and I doubt its efficacy.

From the point of view of the district officer there would, I imagine, also be objections.

8. With regard to the question of petty dealings in grain, I think it might be provided that these, when they are advances from the money-lender to the agriculturist, should be totalled and the amount posted up in the accounts as soon as it reaches a fixed minimum, say Rs. 10. Repayments are generally on a much larger scale and should be entered in the accounts in the same way as cash transactions.

9 Recourse to *hath pawtis* will in practice be necessary, but there should be some restriction on their use as otherwise they will tend to oust the duplicate account altogether. This restriction might take the form of a time-limit, a penalty being provided for failure to bring a *hath pawti* on to the regular accounts within the prescribed period.

10. I agree that the proposed legislation should not be introduced tentatively, but should, subject to the exclusion of special areas to which it is considered unsuitable, at once become universally applicable.

1st August 1912. J. L. RIEU.

No. 13.

Note by Mr. Smart, Acting Director of Agriculture, on proposals of the Dekkhan Agriculturists' Relief Act Commission.

I entirely agree with all the remarks made by Mr. C. C. Boyd in his letters No. 1454 of 23rd July and No. 1589, dated 7th August. I also consider the suggestion of Mr. L. C. Crump, as to the necessity for specific enactment that, in cases where the mortgagee is in possession, he shall keep accounts of a similar nature and similarly furnish copies showing the profits received from time to time, very valuable.

2. I consider that little good will be done unless the use of books paged and numbered are made compulsory. I see no necessity to have them sealed or issued gratis. The number of pages in each book should be printed on the outside and the rules approved by the Courts or the essential features of them should be printed as directions on the inside of the cover. No literate person could then plead ignorance of essential points in the method of keeping the accounts and of the results of neglecting to follow them.

3. The *hath pawti* book suggested should be in counterfoil numbered and printed and the uses of it should be clearly explained in print on the back of each receipt given to the rayat.

4. The importance which the Courts must inevitably attach to accounts kept in such a regular manner is quite sufficient without special enactment as to their evidentiary value.

W. W. SMART,

Acting Director of Agriculture.

No. 14.

Poona, dated the 11th September 1912.

From—R. B. Ewbank, Esq., Registrar, Co-operative Credit Society;

To—The Honourable Mr. S. R. Arthur, on special duty.

In reply to your No. 54 of June 29th, 1912, I have the honour to state that your proposals will not directly affect Co-operative Credit Societies, as they have been excluded from the operation of the Dekkhan Agriculturists' Relief Act under Bombay Act I of 1912.

2. Under section 26 of Act II of 1912, copies of entries in a Society's books have been made admissible in Courts of Law. In spite of this, many societies have voluntarily and on their own initiative adopted the practice of giving pass-books to their members similar to those which you now propose for the use of all savkars. I am of opinion that in villages where the rayats are educated to some extent your proposal will provide them with a valuable safeguard. At the same time from a purely departmental point of view I venture to express the opinion that the present rather severe terms of the Dekkhan Agriculturists' Relief Act help the establishment of Co-operative Credit Societies by stopping other sources of capital and by impelling savkars to make deposits in Co-operative Credit Societies in default of other outlets for their funds.

No. 15.

Junágadh, dated the 30th August 1912.

From—L. Robertson, Esq., I.C.S., Administrator, Junágadh State;

To—The Honourable Mr. S. R. Arthur, on special duty, Bijápur.

In reply to your endorsement No. 55, dated $\frac{29\text{th June } 1912}{5\text{th August } 1912}$, on the subject of the proposed amendment of the Dekkhan Agriculturists' Relief Act, I have the honour to enclose opinions recorded by—

(1) Mr. Manishankar R. Trivedi, Chief Accounts Officer, and

(2) Mr. E. Reuben, Chief Judicial Officer.

2. With regard to the system of duplicate accounts said to be in force in Bhávnagar State, I would advise a reference to the Diwan.

3. My own opinion is that a duplicate system of accounts should be made compulsory and that the necessary pass-books and account books should be issued from a Government office paged, sealed, and endorsed with the number of pages in each book.

4. I am not, however, in favour of enacting that the entries in these books shall be regarded either as conclusive evidence or of presumptive evidence of the transactions to which they relate. It seems to me that so long as the mass of our cultivators are illiterate and too often compelled to borrow through real want, such a provision of law would be very dangerous. I would, however, enact that every plaint shall be accompanied by a copy made by the plaintiff of the relevant entries from the account book and the pass-book and that every written answer to a plaint shall be accompanied by a copy of the relevant entries from the counter-pass-book. The trying Judge would naturally rely on these copies or rather on the originals in deciding the case and the taking of evidence after the institution of the suit would be difficult, if not impossible. Of course, no books except those issued by Government would be accepted in evidence.

5. I have doubts whether a system of licensing savkars would be effective. What would be the effect of cancelling a license? It might prevent the offending savkar from entering into new transactions, but he would have to be allowed to continue his old transactions, which there would be every temptation to manipulate in his own favour in order to recoup himself for the loss inflicted by the prohibition of new business. It also appears to me that difficulty would arise in distinguishing between the process of winding up old transactions and the starting of fresh business.

Junágadh, dated the 15th August 1912.

From—The Chief Accounts Officer, Junágadh State;

To—The Administrator, Junágadh State.

With reference to your endorsement No. 4661 of 6th August 1912, below that of the Honourable Mr. S. R. Arthur, on special duty, on the subject of

certain proposals regarding the working of the Dekkhan Agriculturists' Relief Act, I have the honour to submit, as desired, the following opinion.

2. The points raised in the letter under reply are—

(1) Whether a system of duplicate accounts should be adopted (paragraph 5).

(2) Whether such accounts should be considered as presumptive or conclusive evidence (paragraph 10).

(3) Whether the accounts should be kept in books paged, sealed, and issued from a Government office (paragraph 13).

(4) Whether money-lenders should be licensed.

(5) You have added to the above a query as to whether the system of duplicate accounts is in vogue in any estate of Káthiawár as far as known to any of us.

3. I may be allowed to answer the last query first: No system of duplicate accounts is in vogue in Junágadh or any other State except perhaps Bhávnagar as between creditors and agricultural debtors, but it is a practice in most estates in Káthiawár to keep duplicate accounts of the common village fund called *gam jhampo*, and the trader who advances money or provisions to the fund also enters the expenses in the account book of the *gam jhampo*, which remains with the patel. There is thus at present in vogue in many estates in Káthiawár a duplicate system of accounts restricted to the transactions from the common village fund, which is formed of contributions from cultivators.

4. Sections 65 and 66 of the Dekkhan Agriculturists' Relief Act entitle an agriculturist, on demand, to the supply of an annual statement of accounts and of a pass-book, in which the whole account is made up from time to time. But the agriculturist in practice rarely demands such an account, and if, therefore, it is provided that a duplicate copy of the whole account should remain with him and that no transaction should be entered into by a creditor with an agriculturist, without making a full entry of the transactions in the duplicate copy of the accounts in the custody of the agriculturist, it would be a great safeguard in the interest of honest and literate agriculturists.

5. Both the copies of the account books should be sealed, paged, and should bear an endorsement containing the number of pages and the names of the persons to whom they are issued, and these books should issue from a Government office. In these books each entry on the credit or debit side should be attested by the debtor himself, if he is literate.

6. In cases in which the debtor cannot attest the entries, being illiterate, it is humbly suggested that a system of compulsory registration of each entry in the accounts by village registrars may be adopted, so that the creditor and the debtor may be asked, if the transaction is to be recognized by Courts or by conciliators, to go to the village registrar and to have the transaction registered in his books, and attested by him in both the copies of the accounts against the entry or entries in question, the money being paid by one party to another in his presence.

7. It may be argued that village registrars will have under the above system too much work, and may perhaps collude with the creditor in making entries of larger amounts than actually advanced on the debit side or of smaller amounts on the credit side than actually repaid by the cultivator.

8. But Chapter VIII of the Dekkhan Agriculturists' Relief Act does provide for compulsory registration of "instruments" described therein (*vide* articles 56 and 57). This compulsory registration may, if possible, be extended to all monetary transactions between creditors and agricultural debtors, where the latter cannot himself attest the khata. Any cases of collusion by the registrar will be more easy of detection and punishment than those of fraud of creditor alone.

Perhaps a small fee for the registration will be necessary, and if the number of village registrars is adequate, the journey to be made by parties for getting the entries registered will not involve travelling over large distances.

9. If, however, it is not possible to extend the system of compulsory registration to these accounts, it would appear that the system of duplicate accounts should still be introduced with a proviso, that the entries should be considered as presumptive evidence of what is stated therein. It is true that after the adoption of this system there will be very few chances left to illiterate cultivators to prove before Courts of conciliators the falsity of any entry in these accounts made by unscrupulous creditors. But they will have the undoubted advantage of having with them the means to verify the correctness of the entries after each transaction, and a period of 30 days from the date of the transaction may be given to enable them to challenge, where necessary, the correctness of the entries.

10. The correspondence ending with your No. 4661 of 6th August 1912 is returned.

(Through the Chief Revenue Officer, with compliments.)

Junagadh, dated the 17th August 1912.

Submitted with compliments to the Administrator, Junágadh State, with concurrence in the opinion given by the Chief Accounts Officer.

2. The original papers are attached.

.....

Chief Revenue Officer, Junágadh State.

Would C. I. O. look at these papers and favour me with any remarks he may have to make? If he has worked the Dekkhan Agriculturists' Relief Act, he may have had experience of the difficulties.

19th August 1912. L. ROBERTSON.

With regard to the above I have to submit remarks as under.

The object of keeping duplicate accounts is to furnish trustworthy evidence of transactions. They will be conclusive against savkars. But should they be given similar effect against agriculturists?

The avowed object of the Dekkhan Agriculturists' Relief Act is to relieve the agriculturists and to throw the onus of proof on the savkars, when ordinarily it will be on the debtors. For example, section 12 of the Act provides that in cases falling within Chapter II of the Act, even where the claim is admitted the Court is not to dispense with inquiry, unless it believes for reasons "to be recorded in writing" that the "admission is true, etc." In other cases the Court is always bound to inquire in spite of the debtors' admissions. Even in the case of bonds and deeds executed by agriculturists and duly registered before the village registrars, the Act leaves it open to the debtors while admitting the execution of the deeds to deny receipt of consideration. The recitals in the deeds though always registered are not even given presumptive effect. If so, the Act will require a radical change to enable Courts to regard duplicate accounts as presumptive evidence. To treat them as conclusive is out of the question.

I do admit that with the advance of education and knowledge, the agriculturists are not so much in the hands of savkars as they were a generation ago. But I do believe that they are still more or less helpless. This condition will, I submit, continue so long as they remain in needy circumstances and must look to the savkars to help them out of their difficulties. Nothing will keep unscrupulous savkars (and there are many such) from making what entries they like or from omitting to make certain entries in their books and in the duplicates. The agriculturists will keep quiet either through ignorance or interested motives. They have to propitiate the savkars and they can be easily gulled, especially when

they are in need of the savkars, and the duplicate accounts instead of being a safeguard will tie them hand and foot and ensure their ruination. Even if they are not treated as conclusive, it will be most difficult for the agriculturists to give oral evidence to contradict the books.

In the hands of honest and scrupulous savkars like the late Rao Bahadur Warud of Sholapur, there will be no fear of duplicate account system being misused. But if there were a large number of such savkars, the need of the Dekkhan Agriculturists' Relief Act would hardly exist. The Act is enacted to relieve agriculturists from the rapacity of dishonest creditors in whose hands duplicate accounts will be a most effective instrument of oppression.

With the same object that the Honourable Mr. S. R. Arthur has in view the Dekkhan Agriculturists' Relief Act made every money-bond, of whatever value, to which agriculturists were parties, compulsorily registrable. But the object has practically failed. The opinion including that of eminent Judges like Sir R. West, Dr. A. D. Pollen, and others preponderates in favour of leaving money-bonds to be registered at the option of the parties. The main object of registration under the Dekkhan Agriculturists' Relief Act is to afford evidence of the real nature of the transaction and the consideration for it. But so far from this being the case, the recitals in the bonds and the endorsements of village registrars are very often misleading, being in disagreement with the actual state of things. The result is that the recitals though untrue are held as binding being supported by the village registrars' endorsements. The same result will follow if the duplicate accounts are held as conclusive or presumptive against agriculturists.

I am, however, in sympathy with the proposal and I think it ought to be given a trial with the reservation that, if challenged, it should be open to the Courts to inquire into the transactions and demand evidence from savkars.

The duplicate accounts should not be made compulsory. Otherwise it will be a hardship on illiterate savkars who are sometimes to be met with, and it not infrequently happens that a widow has to carry on the money-lending business of her deceased husband which cannot be immediately wound up.

It might be asked what inducement has a savkar to keep duplicate accounts when they are not to be looked upon as conclusive or presumptive. My answer is that good deal will depend upon the treatment they receive at the hands of the Civil Courts. If proof is needed of certain entries in the duplicate accounts, the Courts should not insist upon as strict proof as they ordinarily do. If the duplicate accounts are looked upon with favour and treated with consideration, it will be the fault of the savkars if they do not adopt the suggested scheme.

As every encouragement is to be given to savkars to keep duplicate books, I would not insist upon their obtaining sealed and paged books from a Government office. Neither do I think it advisable that every entry in the accounts should be registered that would mean inconvenience and expense out of all proportion to the transactions and is sure to make the scheme unpopular.

The idea about licensed money-lenders seems to me good.

.....

26th August 1912 Collector.

No. 16.

Sholápur Collector's Office, dated the 3rd August 1912.

From—G. W. Hatch, Esq., I.C.S., Collector and District Magistrate, Sholápur;

To—The Honourable Mr. S. R. Arthur, on special duty.

I have the honour to reply to your No. 54, dated 3rd July 1912.

2. I attach copies of the remarks submitted by the gentlemen named in the margin to whom I referred your letter.

Rao Saheb L. N. Joglekar, Mamlatdar of Sholápur.
Mr. H. V. Kane, Subordinate Judge, Sangola and Málsiras.
Mr. S. V. Parkhe, Nyayadhish of Akalkot.

3. My own view is that the adoption of your proposal will greatly strengthen the position of the savkar in the Courts, whether he is an honest man or the reverse. A dishonest savkar will still succeed in inducing the rayat to put his signature to anything he pleases—just as he does at present. Your proposal would, however, have the incidental advantage of driving illiterate savkars out of the business. If it were combined with a system of licensing and registration, as suggested in paragraph 14 of your letter, I should welcome its introduction *experimentally*. I would, however, prefer that the accounts should be presumptive and not conclusive proof of the entries contained therein.

Remarks made by Rao Saheb L. N. Joglekar, Mamlatdar of Sholápur, regarding the introduction of the system of keeping a separate account in duplicate by a money-lender of his dealings with each agriculturist-debtor.

Section 66 of the Dekkhan Agriculturists' Relief Act already makes it obligatory on a money-lender to give, *on demand*, a pass-book to an agriculturist and to bring it up to date from time to time under the signature of the *money-lender*. This does not provide for the *obtaining* also of the *debtor's signature* or mark on the pass-book as well as on the money-lender's account book in token of his having agreed to the entries made. This leaves a loophole to the debtor to turn round against the savkar and to keep back the pass-book, with a view to assert that it was never given to him, and allege that either the whole or most of the debt has been repaid and to claim an examination of the savkar's account and past history of the transaction in view of the false witnesses the debtor may produce and try to see if he secures any undue profit from the Court; on the other hand, as the compliance with the provisions of the section was made dependent on the contingency of making a *demand* for the pass-book the debtors do not claim the right partly on account of the ignorance of law and partly for fear of losing the goodwill of the savkar and thereby losing the only means of obtaining money in times of need.

2. The introduction of the proposed system and the doing away of the term "on demand" from the law and the obtaining the signature or mark of both on the pass-book and its office copy, will no doubt remove these loopholes, and as it is intended to provide that no plaint should be entertained by a Court without an entry from the account being attached to it, the savkar and the agriculturist-debtor will consider it to be a legal obligation and will meekly submit to it, without finding fault with the other party. Any cause of displeasure on that account will thus be removed. The debtor also, when he knows that the provisions of the Evidence Act regarding the exclusion of oral by documentary evidence would be enforced after the expiry of thirty days from the alleged payment, will either see that correct entries are made by the savkar each time any payment is made, or will satisfy himself of showing the pass-book to others within the proposed time of thirty days, that the amounts paid by him are correctly brought to account on the introduction of the proposed legislation compelling the savkar to keep duplicate accounts and to give the pass-books to the debtors; some cases will no doubt occur, through ignorance of the debtors, of savkars making shorter credits or larger debits, but as the system progresses, it will put a stop to all these things and will ensure real relief to agriculturists and also to Courts in this respect that the number of suits would considerably fall down, and in the case of those that may actually be brought to Court, the hearing would be greatly facilitated, as the debtors could not then go beyond what is written in either the savkar's or the debtor's account under the authentication of both the parties.

3 It would add to the safety of the agriculturists and to the proper enforcement of the provisions of the proposed law, if each time a debtor contracts a debt he is made to purchase a pass-book from the village kulkarni for a nominal amount and if these are kept in stock in each village duly paged and sealed from Mamlatdar's office. The Mamlatdar or his superiors may, when inspecting a village, see the register kept by the village officers of the sale of these pass-books, and call up any of such pass-books for inspection with a view to satisfy

that the law is being properly enforced, and may in cases in which an intentional breach of law might be noticed, prosecute the savkar without even any move in that direction from the debtor.

(True extract)

R. B. DESHPANDE,
Head Clerk.

Remarks made by Mr. H. V. Kane, Subordinate Judge, Sángola and Málsiras, regarding introduction of the system of keeping a separate account in duplicate by a money-lender of his dealings with each agriculturist-debtor.

I beg to state that I find the proposals so very carefully drawn up, that it is impossible to make any suggestions for improving them. The system of duplicate accounts may be introduced, signed by both parties, and the entries in them should be made conclusive, as suggested in paragraph 5 of the letter, and applicable to both literate and illiterate parties. It would be better in my opinion if the books are furnished, sealed and paged, by a Government officer, that will prevent a great deal of fraud. I am not in favour of licenses to money-lenders, those that are honest today are sure to turn out dishonest when they get a monopoly of money-lending. I would suggest that it would be better if all money-lending is kept in the hands of limited societies like the Co-operative Societies under proper supervision, and if all private money-lending is prohibited.

(True extract)

R. B. DESHPANDE,
Head Clerk.

Remarks made by Mr. S. V. Parkhe, Nyayadhish of Akalkot, regarding the feasibility of the introduction of the system of keeping a separate account in duplicate by a money-lender of his dealings with each agriculturist-debtor.

The system, as proposed in the letter, should not only be introduced, but the accounts produced by the parties should be held as a conclusive proof of the payments by the parties. As regards payments by a savkar to his client on the latter's passing a registered deed, they should strictly be made in the presence of the Sub-Registrar. Mere admission of the agriculturist that so much was already received by him from the savkar should not be held binding on him. A provision should be made in the Registration Act that a deed would not be registered, if the savkar does not actually pay the amount in the presence of the Sub-Registrar. Savkars many times pay less and take a deed for more amount. If the debtor taking the whole amount of the bond pays a portion of it to the savkar privately, it is not necessary to relieve him against his own act. This will put some check on the fraudulent transactions of the savkars at the time of the first advances. Honest savkars generally take care to pay the amount in the presence of the Sub-Registrar to save the bother of proving payment. The system should be made obligatory on all money-lenders, literate or illiterate.

The effect that will be produced by the introduction of the system is that the debtors will find it more difficult to get money. It is doubtful whether illiterate savkars will undergo the bother of keeping accounts. It is with regard to transactions of such savkars that a difficulty is experienced at the time of taking accounts. In villages several agriculturists deal in small money-lending business. If such persons stop to advance money, the difficulty of agriculturist-debtors will be increased. To avoid such kind of bother to agriculturists, it is better that Co-operative Credit Societies be introduced on a larger scale. There must be one at least at every taluka station with its branches spread over a few other big villages in the same taluka. My experience is that if there is no fraud on the part of the savkar, there is no fraud on the part of his clients. I am the

Secretary to the State Land Bank at Akalkot, and though the transactions amount to about Rs. 15,000 to Rs. 20,000 every year, not a single complaint has been ever made either about advances or receipts.

On the whole I think that the system will work well and will in the long run prove beneficial to both parties.

(True extract)

R. B. DESHPANDE,
Head Clerk.

No. 17.

Extract from the evidence of H. L. Hervey, Esq., I.C.S., District Judge, Sholápur.

Accounts.—I approve of the proposal that money-lenders should be required to keep stamped and paged accounts in duplicate of their transactions with each debtor, one copy to remain with each party, provided the necessary safeguards can be devised. I would accept the entries which would be signed by both parties* as conclusive proof of their correctness, but I would not lay down that the absence of a credit entry was conclusive proof that no such payment has been made.

*Thumb-impression of agriculturists.

(True extract)

S. R. ARTHUR,
President, Dekkhan Agriculturists' Relief Act Commission.

No. 18.

Bijápur, dated the 29th July 1912.

From—J. K. N. Kabraji, Esq., Collector of Bijápur;

To—The Honourable Mr. S. R. Arthur, I.C.S., on special duty.

I have the honour to state my opinion on the points referred to in your letter No. 54, dated 29th ultimo.

2. I am of opinion that the system of keeping accounts described in paragraph 5 of your letter is well calculated to prove successful and is certainly well worth a trial. While, however, the keeping of accounts in this manner should be compulsory, I am inclined to think that, as suggested in your paragraph 10, such accounts, duly attested, should be regarded as presumptive evidence, at any rate, for some years; leaving it open to the Court to take further evidence. If after some years' experience it is found that the accounts so kept are generally trustworthy, then will be the time to make them conclusive evidence. I have, however, little doubt that in course of time when creditors and debtors alike see that it is good for both to take clean accounts to Court, the number of untrustworthy accounts will naturally go down, and the way will be paved for the prescribed accounts being declared conclusive evidence.

3. In the same way, I am of opinion that the proposal to bar evidence of payment by client to money-lender, after thirty days, should be made less rigid.

4. I am of opinion that the proposed accounts should be kept in books paged, sealed and stamped by the Stamp Department, a nominal stamp fee of 2 annas being charged per book.

5. I do not think a system of registration and license of money-lenders is called for, or that it will work.

6. Nor do I think it possible to arrange for an inspection by Revenue Officers of the account books kept according to the proposed system.

No. 19.

Dated the 10th July 1912.

From—F. K. Boyd, Esq., I.C.S., District Judge, Bijápur;

To—The Honourable Mr. S. R. Arthur, on special duty, Belgaum.

In reply to your No. 54, dated the 3rd July 1912, I have the honour to submit the following opinion.

2. I have never been in a district to which Chapter IX of the Act applies. But *á priori* I should think that chapter entirely unworkable. Section 67 is the sanction section. It would be almost, if not quite, impossible to prove any offence under that section, *e. g.*, a savkar accused of not tendering a receipt has only to plead either (*a*) that he did tender a receipt, or (*b*) that there was no payment, therefore no receipt. The burden would be on the debtor and the standard of proof that obtaining in *Criminal* Courts.

3. In regard to your proposal as to the keeping of accounts, I have little or nothing to add to the views I expressed to you personally during your visit to Bijápur. Your proposal is, virtually, that in petty money-lending both sides should follow a practice in account-keeping rather stricter than that common to all first-class business. In my opinion, this is far too much to expect.

4. Whenever there are serious accounts in any case they carry great weight already—quite as much as they ought to. To make them either conclusive or presumptive proof (which would almost always amount in practice to exactly the same thing) would be to give them far too much weight—far more than is given by the ordinary law. Under section 34 of the Evidence Act account entries are merely made *relevant*, and it is specifically added that they "shall not alone be sufficient evidence . . . ." Yet, unless your proposed legislation as to keeping accounts is to be a mere pious opinion, or *brutum fulmen*, there is no alternative to making them conclusive or presumptive. If properly kept they are already relevant, and accounts are, of all forms of documentary evidence, the most easy to fabricate.

5. In regard to your proposal, in paragraph 14 of your letter, that money-lenders should be registered and licensed, this is, of course, what is done in England. But I think it quite impracticable in this country, where practically every one, who has any money at all, is a money-lender. Lending is practically, except in the most advanced communities, the only way known of utilizing money.

6. I regret that I am not impressed by the evidence of Mr. Desai, or of the trustees of the late Rao Bahadur Warud of Sholápur. No doubt there are many cases in which both sides are honest and businesslike. But these are not the cases which come into Court, nor those for whom legislation is required.

No. 20.

Surat Castle, dated the 22nd July 1912.

From—L. J. Sedgwick, Esq., B.A., I.C.S., Assistant Collector, Surat, for Collector;

To—The Honourable Mr. S. R. Arthur, I.C.S.

In reply to your No. 54 of 3rd July 1912 asking for opinion on Chapter IX of the Dekkhan Agriculturists' Relief Act and the proposed system of double accounts, I have the honour to reply as follows.

2. The extent to which a system of double accounts is in force throughout Gujarát will be seen from paragraph 2 of the opinion of Mr. Naranbhai Lallubhai Desai, attached. His remarks are also of interest.

3. I can say from the experience obtained during the hearing of income-tax appeals this year in this district that many money-lenders do not keep any accounts, except a *samadaskat* ledger; and accounts in this ledger are not made up at regular intervals, but drag on for years until the savkar sees fit to close them. I agree with Mr. Desai in thinking that the production of a day-book in court should be made compulsory, and that the proper making up of all accounts once a year should be demanded.

4. Mr. Desai rightly says that in the case of payment in kind (grain and cotton) the savkar has a double opportunity for fraud, because he can cheat over the current rates of the goods brought. It is commonly said in the Mándvi taluka that if a Kaliparaj debtor brings two rupees worth of grain the savkar enters it as one rupee paid. It would act as an additional check on accounts, if in the case of payments in kind the entry of its quantity as well as its equivalent value should be demanded in the accounts.

5. As regards the suggested system of duplicate accounts and the objections urged in paragraph 8 of your letter, I have nothing further to add to the arguments therein tabulated.

6. A question arises as to the liability of the parties in the event of the debtor losing his copy of the accounts. A provision would appear to be required enabling him to apply at once to a court to obtain a fresh one.

7. At present I am strongly opposed to the duplicate accounts being classed as conclusive proof. If they are so classed, I would urge that certain castes, including all those ordinarily called Kaliparaj in this district, should be excluded. The time has not yet come when the Chodra or Naikda can be relied on to pay any attention to his duplicate copy. I fully expect that he will leave it with the savkar for safe keeping! On the other hand, the accounts must be allowed to be presumptive proof at any rate, otherwise their whole usefulness will be done away with. What I would suggest is that they should be conclusive proof in cases where the debtor is literate, and presumptive proof in other cases.

8. I am opposed, however, to the division of savkars into literate and illiterate. Illiterate savkars must keep a clerk, and if the system is introduced, it should be made binding on all.

9 You will see that Mr. Desai is in favour of books paged and sealed being issued from Government offices. I cannot support this suggestion. It savours of the Indian *vice* of asking the Sarkar to do everything—moreover, it would throw a considerable amount of work on Government offices already overworked.

10. Mr. Desai's remarks on the licensing of money-lenders is interesting. It is true that many private gentlemen, agriculturists and others, in this country do a little money-lending. If therefore a system of licensing were introduced, it would be necessary to distinguish between professional money-lenders and others, a very awkward distinction.

11. As regards inspection of accounts by Assistant Collectors and Mamlatdars, I suppose most Assistant Collectors would agree with me that, owing to the multiplication of things to be inspected during the last eight or ten years, it is usually very difficult to make a complete village inspection in one morning, except in the case of very small villages. Inspection of savkar's accounts would therefore tend to be very summary—moreover, the savkars would take care to put up before the officer clients with whom their dealings had been thoroughly honest, just as kulkarnis do now in the inspection of Revenue receipts. Lastly, it is to be noted that money-lenders usually live in colonies in the larger villages, while their clients are scattered over a wide range of country. But it is mainly in the case of distant clients that fraudulent dealings are resorted to. For instance, in the Mándvi taluka practically all the money-lenders reside in Tadkeshwar, Bodhan, and Mándvi, and these are the very villages in which there is a specially large amount of inspection work to do.

12. I should add that the opinions in this letter are those of the undersigned and not of the Collector himself, who is not well enough to report.

(Through the Commissioner, N. D.)

Ahmedabad, Shahi Bagh, dated the 24th July 1912.

Forwarded.

R. P. BARROW,
Commissioner, N. D.

Surat, dated the 13th July 1912.

From—The District Deputy Collector, Surat ;

To—The Collector of Surat.

Your No. D.A.R.-26 of 6th instant, I beg to return herewith its accompaniment, and to express my views as under.

2. The proposed system of duplicate accounts is not generally in force throughout Gujarát: but obtains between cash-lending savkars and literate or intelligent illiterate agriculturists. No sooner an amount is advanced by the savkar or paid by the debtor, than it is entered in the savkar's daily cash account book, and a corresponding entry is made in that of the debtor. This serves as a best check. But no such entries are made as regards kind.

3. What we want is to safeguard the interets of both the creditors and debtors as regards payments in cash and kind. It is as regards the latter payments of kind that the fraudulent savkars defraud the debtor. and specially as regards the rates of prices. A machine-bound book paged and sealed may be issued from a Government office and supplied to all debtors at a certain price: and it may be in the form of the pass-book issued to a depositor of a Savings Bank with two additional columns, one for an entry in kind and the other for the price rate. The pass-book should be filled up, both by the literate and illiterate money-lenders, with their initials or thumb-impressions, in default whereof they should be fined. I do not think it should require the initial or thumb-impression of the debtor on whose shoulders, however, the burden of having the entry verified and corrected within fifteen days should be laid. I made a suggestion for such a pass-book in my notes at the time of giving my evidence before the Commission.

4. I would here like to add that most of the savkars keep the Tham Khatavahi or Sama Daskat only and no day-book. This leads to frauds. If they were ordered to keep and produce the day-book also, there would be less chances of frauds which would be easy of detection also.

5. Yes, it would be a best check if an inspection of a certain number of such accounts with savkars by Collectors and Assistant and Deputy Collectors and Mamlatdars were made at the time of the village inspection. But to enforce this is no easy task, as in big villages many of the khatedars, as they are not bound by law to do so, do not attend the inspection. So, unless the attendances were made compulsory, the inspection would not be thorough. The entries after the inspection would be conclusive evidence. The accounts in the pass-book should be squared up at the Divali.

6. I would not advocate the policy of having registered and licensed money-lenders. It would discourage competition and put the borrower to a disadvantage. Having got a monopoly, the licensees would exact as much as they could. The debtor would not under the system get loans from his own landlord or even his relative or castefellow or a money-lender of a neighbouring foreign village on easier terms, as they would not wish to take out licenses. For instance, being a landlord I would lend money to my tenant to purchase bullocks or manure on more easier terms for the sake of my own land than a licensed money-lender, or to a relative of mine to emancipate him from the clutches of the savkar: however, I would not like to take out a license. I would rather have rates of interests and discounts beyond a certain limit made penal, our sole aim being to discourage profligacy only on the part of the debtor and exhorbitant rates of interests and discounts on the part of the savkars and frauds on the side of both.

No. 21.

Surat, dated 27th July 1912.

From—Motiram S. Advani, Esq., M.A., Bar.-at-Law, District Judge, Surat;

To—The Honourable Mr. S. R. Arthur, on special duty.

As requested in your letter No. 54, dated the $\frac{29\text{th June}}{4\text{th July}}$ 1912, I have consulted the Judges under me and the two leading Pleaders of the bar on the question referred to me. Their opinions are herewith forwarded for your information.

2. My view is the same as has been expressed by Mr. Sanjana (Judge of the Small Cause Court).

Surat Small Cause Court, dated the 15th July 1912.

From—Tehmuras N. Sanjana, Esq., Judge, Small Cause Court, Surat;

To—The District Judge, Surat.

With reference to the suggestions made by the Honourable Mr. S. R. Arthur in his letter No. 54, dated the 29th June 1912 on the subject of Chapter IX of the Dekkhan Agriculturists' Relief Act and the question of receipts and accounts in reference to transactions in which one party is an agriculturist, I have the honour to submit the following report.

The Honourable Mr. Arthur's suggestions are three, *viz.*:—

(*a*) Obligatory keeping of accounts in duplicate with each entry under the signatures or thumb-impressions of the parties;

(*b*) Accepting the entries in these accounts as conclusive proof of the loans and repayments noted therein; and

(*c*) Excluding oral evidence of loans and repayments not entered in the accounts.

The suggestion (*a*) is a good one so far as professional money-lenders are concerned. But I am afraid it will cause hardship in the case of persons who do not follow the regular profession of a money-lender, but advance occasional loans to a few agriculturists on bonds and khatas and who do not keep accounts. It will cause still greater hardship in the case of such persons when they are illiterate, and in the case of agriculturists who advance friendly hand-loans of a few rupees or a small quantity of seeds. It will be extremely difficult to mark out who are professional money-lenders and who are not. Even if the system of registration and license of money-lenders is introduced, I doubt much whether many money-lenders would come forward to take the license and be under the obligation to keep accounts in duplicate, unless the license is made compulsory, when without such license, they can carry on their profession as at present. I doubt much whether the system of compulsory license will be a wise policy.

The system of obligatory keeping of accounts in duplicate will, no doubt, be an improvement on the provision contained in section 66 of the Dekkhan Agriculturists' Relief Act, if it is confined to professional money-lenders. In that case, it would be desirable that the account should be kept in books, paged and sealed and issued from a Government office.

Coming to the suggestions (*b*) and (*c*), very few persons can refute the reasons urged in favour of their introduction by the Honourable Mr. Arthur. But the Dekkhan Agriculturists' Relief Act has been dictated more by policy than by justice. It was to allay irritation and discontent of the agricultural class that on political grounds the strong unusual measures in favour of the rayat contained in the Act were given legislative effect. It is for Government to decide whether they would continue that policy or change it. If it is to be changed, then there is no necessity for the amendment suggested by the Honourable Mr. Arthur, and the Act may be done away with. If thought desirable, the few beneficial provisions of the Act, which are of general application, may be incorporated into the general law, *e.g.*, those conferring power to go behind the documents and

enquire into the merits and history of the case in certain cases against agriculturists, power to grant instalments in mortgage suits and after decrees, power to cut down unreasonable interest, etc. If the present policy is to be continued, then the suggestions (*b*) and (*c*) are not only inconsistent with that policy but are also inconsistent with the most important provisions of the Act enacted in pursuance of that policy. It would not be consistent to hold entries in plaintiff's account books under the signatures or thumb-impressions of both the parties as conclusive proof of the loans or repayments noted therein, when under sections 12 and 13 of the Act the Court is directed to attach no weight to any statement or settlement of account between the parties and to set the same aside and to take account afresh; and when under section 10-A evidence is to be taken, in contradiction of the terms of contract embodied even in registered deeds. Take an every day instance of a suit on a bond passed by an agriculturist in which the consideration money is recited as paid in cash on that day and in support of that recital an entry in the plaintiff's account book is produced. If the Honourable Mr. Arthur's suggestion is adopted, the entry in his book will be a conclusive proof of the loan having been advanced on that day, but under section 12, if the defendant-agriculturist disputes the claim and contends that the money was not lent to him on that date but that the bond was passed for old debt due, the Court will be bound to enquire into the history and merits of the case and take an account between the parties in the manner provided in section 13. The two provisions will therefore be inconsistent. The suggestion now made cannot therefore be accepted, unless the most important provisions of the Act contained in sections 10-A, 12, and 13 are also modified or rather annulled. If they are annulled, there will be very little left of the special provisions of the Act, and as the Act now stands, I do not think it possible that the suggestions (*b*) and (*c*) of the Honourable Mr. Arthur can be accepted.

Surat, dated the 15th July 1912.

From—Nandkrishnalal Ratanlal Majmudar, First Class Subordinate Judge, Surat;

To—The District Judge, Surat.

In reply to your No. 1028 of the 6th instant, I beg to state as follows:—

1. That the proposed system of double accounts should be introduced.

2. That these accounts should be kept in books, paged and sealed and issued from a Government office.

3. That all entries must bear the signatures of both the creditor and the debtor, if they are literate, or by their thumb-impressions, if they are illiterate.

4. That the accounts be treated as conclusive evidence as against the creditor and as strong presumptive evidence as against the debtor.

5. That further checks, such as the registration and licensing of money-lenders and inspection by Revenue officers, are neither necessary nor desirable.

6. That no plaint and no written statement of a creditor should be entertained by a court without entries from his account book being attached to it.

7. That no plaint or written statement of a debtor should be entertained without entries from his book being attached to it; in any case in which the debtor does not allege that the book was given to the opposite party, for making entries, and was not returned; that in that case, the question whether the debtor's allegation is or is not true should be tried as a preliminary issue.

As pointed out by the Honourable Mr. Arthur, the creditor ought to have no objection to the introduction of the proposed system of duplicate accounts. The objection to it from the debtor's point of view, namely, that the man who is in urgent need of money would attach his signature or thumb-impression to the debit entries of double the amount which he receives, and that he will lose repayments which remain unentered, either through the debtor's laziness or the

creditor's rascality, will, I respectfully submit, be sufficiently met with by providing that the entries shall be conclusive evidence against the creditor only, and that they shall be only presumptive evidence against the debtor. The creditor ought to have no reason to complain against this provision, though it is one-sided, for the very object of the Dekkhan Agriculturists' Relief Act is to protect the ignorant rayats from their grasping or unscrupulous creditors.

Surat, dated the 15th July 1912.

From—Beram N. Sanjana, Esq., Small Cause Subordinate Judge, Surat;

To—The District Judge, Surat.

With reference to your memorandum dated the 6th July 1912, forwarding a copy of the letter No. 54 from Honourable Mr. Arthur for report, I have the honour to submit that the system of account-keeping proposed by Honourable Mr. Arthur will to a certain extent simplify courts' work in taking history. But beyond that I do not think any better results will follow from it. I do not think that those accounts if invested with higher evidential value than they would have under the ordinary law would at all tend to better justice between the agriculturist and savkar.

The very first effect of making such accounts conclusive or presumptive evidence would be to abrogate the provisions of sections 10-A and section 12, penultimate clause. Then it would virtually alter the whole spirit predominating the Dekkhan Agriculturists' Relief Act. The key to that spirit is in section 12, which directs investigation by court both of the past history and the merits of the claim. But once the accounts are made presumptive or conclusive evidence of their truth, nothing would remain to investigate, and mere inspection of those accounts would take the place of enquiry on which so much stress is laid in section 12.

From 4 (3) of Honourable Mr. Arthur's letter, it would appear that it is not intended to alter the policy of law which attaches so much weight to the investigation of history, but rather to maintain it. That being so, the value of the system proposed must be judged only by its power to lead the court nearer to the true history. If the system tends to simplify courts' work without leading to better results in the tracing of history, then its value could not be rated very high. The system proposed will in my opinion more often bar the way to the true history than lead to it. And my grounds for that opinion are exactly the same as are mentioned in the first two clauses of paragraph 8 of Honourable Mr. Arthur's letter. The arguments put forward in the subsequent part of that paragraph as answering those grounds are in my opinion not so valid as at first sight they appear to be. Those arguments are: *First*, that it is no concern of the law to protect a fool from the results of his folly. *Secondly*, that such an attempt only puts a premium on dishonesty. *Thirdly*, that the proportion of cases in which the court will accept oral evidence in variance of written deed being of necessity small, it is not worth while for the sake of that small proportion to leave an opening for false evidence.

When carefully examined, these arguments would be found to be wholly against the accepted doctrines of law.

For instance, the first argument in its broad generality would go far to demonstrate the futility, not only of the whole Dekkhan Agriculturists' Relief Act, but also many other provisions of law, such as section 16, Contract Act, and section 92, proviso (1).

The theory underlying these provisions is that it is the duty of the law to interfere for the protection of a man against the consequences of his own action, when either on account of mental inferiority or through the relation subsisting between him and the other party to the transaction he is not able to safeguard his own interests. The whole Dekkhan Agriculturists' Relief Act proceeds on the assumption that agriculturists as a class, through mental weakness or peculiar

position in life, often fall helpless victims to the rogueries of their savkars. On any other assumption the special provisions about investigating history, cutting down interest and taking accounts in a particular manner would be inconceivable.

Therefore so long as the principle of investigating history in agriculturists' suits is maintained, every facility should be left to the court to arrive at the correct history and the doors to investigation should not be closed on the ground that it is not always practicable to protect people from the consequences of their ignorance, illiteracy or improvidence.

The second and third arguments pushed to their logical consequences would furnish equally good reason for abolishing oral evidence from our law courts altogether. Oral evidence on whatever point is very often tainted and of doubtful character. But on that account no one would venture to propose that in no case should oral evidence be admitted. Why stricter provisions are necessary against its admissibility in agriculturists' suits?

False evidence comes in, because investigation into past history is made compulsory, and such investigation could not be properly made without letting in a certain amount of oral evidence. The proposed procedure by shutting off oral evidence will indirectly close the door to all investigation. It would then be far simpler to abrogate the provisions about compulsory enquiry into history than to say that the accounts kept in a particular manner shall be accepted as conclusive or presumptive evidence.

Then again I fail to see how the proposed system will hold out an inducement to honest savkars to resume their relations with agriculturists. If honest savkars are now reluctant to invest their monies in the money-lending business with agriculturists, that is due not to the fact that the court fails to arrive at correct conclusions in its efforts to investigate past history of the transactions, but from the fact that, as the law stands, it is not always possible for him to get all that he bargains for, but only so much as on taking account in a particular manner might be found due and that too again very often in instalments running over several years. Then another particular difficulty in his way is that the law refuses to enforce his dues from an agriculturist by arrest or sale of his house and in some districts even of his land. So long as these provisions of law stand, savkars would naturally show reluctance to make advances to agriculturists. And the cause of that reluctance would not be wholly removed by prescribing accounts kept in a certain form as conclusive or presumptive evidence. On the contrary, it is to be apprehended that such provisions would only add to the opportunities of an unscrupulous savkar and strengthen his hands in our law courts.

With reference to paragraph 10 of the letter under consideration, I think that if the proposed system is to be at all made obligatory then it should be made obligatory on all money-lenders, literate or illiterate, without distinction; otherwise so many elements of uncertainty and complications would be introduced as would make the administration of justice more difficult and more precarious than at present. For instance, the first creditor who commenced dealings might be illiterate, but his successors might be literate or *vice versa*. In such and many other cases it would be very difficult to decide whether the creditor was or was not under obligation to keep account. To illustrate how difficulties might crop up from unknown quarters by making any system of account-keeping compulsory, I might point out that under the Act as it stands a debtor's status might change any moment. Though not an agriculturist at the commencement of his transaction, he may become one before suit; or his rights as a mortgagor might by assignment before suit become vested in one who is an agriculturist. Should the money-lender be expected to provide against such contingencies by adopting the new system of account-keeping in anticipation? That would be virtually to make it necessary for him to adopt this particular system in his dealings with all classes of customers and it is sure to prove very cumbersome to many respectable firms of money-lenders.

As regards the suggestions in paragraphs 13, 14 and 15, I do not think any of them is very feasible or conducive to more honesty in the transactions between an agriculturist and his creditor.

Olpád Subordinate Judge's Court, Camp Surat, dated the 11th July 1912.

From—Naginlal Venilal Desai, Esq., Subordinate Judge, Olpád;

To—The District Judge, Surat.

With reference to your No. 1028 of 1912 regarding opinion upon a proposed system of duplicate accounts in the Honourable Mr. Arthur's No. 54 of 29th June 1912, I have the honour to report that I have seen some—but very few—cases in Gujarát districts in which a savkar gives a duplicate pass-book to his debtor noting all the transactions between them. But in a large majority of cases such duplicate accounts are never kept. I agree that as the accounts are kept now, courts are asked to sift out the truth from a mass of conflicting and very often false evidence. I was in Sholápur District for over two years, where the whole of Chapter IX was in force, and from my experience of the working of that chapter, I can say it is no very great improvement upon the system of dealings prevailing here, except that it gave occasion for a few prosecutions every year of some savkar, who was alleged to have refused to give to an agriculturist a receipt for payment made.

The present mode of taking accounts and tracing the history of dealings is no doubt very unsatisfactory, but courts cannot help it. More often than not oral evidence about payments by agriculturists is unreliable and the agriculturist is not able to prove the alleged payment. If the savkar keeps regular accounts of all other transactions and dishonestly omits to credit a large payment made to him and for which he has given no receipt, in 99 cases out of 100 he will be able to prove in court after a lapse of some years that the payment was not made, for he will be producing his regular books, while the agriculturist will have unsatisfactory oral evidence to fall back upon. For these and other reasons given in the letter under reply, I am in favour of the proposed system of duplicate accounts. The possible objections to it are all anticipated in the letter, and I agree with the Commissioners that in order to protect the fool (and I believe these would in course of time be not many) from the results of his folly, we should not maintain a system which puts a premium on dishonesty. I am not, however, in favour of shutting out all evidence of alleged payments—if not entered in the pass-book—I will not make the duplicate accounts *conclusive* proof of dealings between parties. To make them so, will be putting the agriculturists (presumed to be mentally infirm) in a worse position than an ordinary gentleman. As the law stands at present, even a very intelligent and educated gentleman has the right to prove that, though he has admitted the payment of consideration in writing under his signature, nothing was paid to him. I do not know, then, why the duplicate be made *conclusive* evidence in the case of an agriculturist and why he should be deprived of an opportunity of proving the falsity of the written word? I know that in a large majority of cases the duplicate will in effect be believed to be true. But if real fraud has been committed by a savkar, I am certainly against depriving the agriculturist of a chance of proving the fraud. I will therefore make the duplicate only presumptive evidence. This will no doubt be to some extent encouraging the honest money-lender, for he will then have a legislative assurance that, unless fraud is proved against him, he will not lose his just claims. If the system is to be introduced, it must be made obligatory on all money-lenders, literate or illiterate. The accounts should be kept in books paged and sealed and issued from a Subordinate Judge's Court. I am against the system of registration and license of money-lenders. This would work considerable hardship in practice.

The check proposed in paragraph 15, Inspection of Rayats' Account Books with savkars by Assistant Collectors and Mamlatdars, is not feasible. It is not like inspection of receipt books for assessment paid, the parties to which will all be in the village visited. But in these accounts the duplicate will be in the village with the rayat and the original with the savkar, who more often than not lives in some other village far away. Unless both the original and the duplicate are inspected and compared, none of them can be correctly tested. If any check is to be provided for, the savkar may be asked to have his account checked, say, every two years, at least, through the court. Of course, for this the court would have to call the debtor with his duplicate by notice, and after it

is compared with the original they may be signed by the judge. This will no doubt throw some more work upon our courts, but it will be in lieu of the anticipated decrease in the number of suits.

On the whole, therefore I am in favour of the system proposed in paragraph 5 of the Honourable Mr. Arthur's letter. I will only add that the fact a duplicate has been given to the debtor should be attested to in the first instance by a responsible officer. Otherwise the defendant may not produce the duplicate and plead that none has been given him. If the agriculturists only take care to take advantage of this system, I am sure it will be successful. But much will depend upon the agriculturists themselves.

Bulsár Subordinate Judge's Court, dated the 13th July 1912.

From—I. D. Munim, Esq., B.A., LL.B., Subordinate Judge, Bulsár;

To—The District Judge, Surat.

In reply to your endorsement No. 1028, dated 6th July 1912, forwarding for report the Honourable Mr. Arthur's letter No. 54, dated 29th June 1912, I have the honour to state that similar proposals were made in the past, but they were then considered impracticable, if not extravagant. It is a great satisfaction, however, to find that the system of giving pass-books to agriculturists and entering up all transactions therein is in force in Sholápur and Bhávnagar.

2. There is no doubt, I think, that the introduction of the system proposed by the Dekkhan Agriculturists' Relief Act Commission is not only desirable but necessary in the interests of all concerned. All the entries must be filled in by the savkars somewhat on the system of entering up dealings, *e. g.*, deposits, withdrawals, etc., in Post Office Savings Bank and other Bank pass-books, separate columns being reserved for loans made to agriculturists from time to time and for the several part-payments made by them. In the last but one column the agriculturists and savkars may put down their signatures or thumb-impressions, and the last column must be reserved for the countersignature of the Taluka Mamlatdar or Aval-Karkun. Instead of the proposals periodical inspection of Rayats' Accounts by Assistant Collectors and Mamlatdars at the time of village inspection which may perhaps take place once in a year, I submit that my proposal of getting them to scrutinize and countersign the pass-books will not only ensure straight dealings, accurate entries and a fair chance to the officers of verifying the agriculturists' complaints, if any, but the work of the civil courts will be greatly simplified and there will be no room left for perjury, forgery, etc., countersigning the entries in pass-books and duplicates will not entail any appreciably extra work or responsibility on the Revenue officers, but even if it does, it would be worth while to work the system as an experiment. With the safeguards referred to above, the entries in the savkars' duplicates (pass-books) may be taken to be conclusive against not only the savkars but also against the debtors; accepting them only as presumptive evidence will leave loopholes for both the parties, and it is, I think, on the whole, desirable that no door for perjury and future manipulations and village strategy should be kept open. Subsequent oral evidence in variation of the entries made in pass-books should be rigorously shut out, after the expiry of one or two months.

3. It is certainly the better policy to put the law on lines which will put a premium on honesty, though a few ignorant and illiterate debtors may possibly suffer thereby. I am also of opinion that the pass-books and savkars' duplicates should be paged, sealed and issued from a Government office, as attestation of entries by ordinary non-officials or even by the village officers is not sufficient without further safeguards.

4. It is not quite necessary to have licensed and registered savkars, but the proposed system will eliminate and drive out of the market the savkar of the unscrupulous and undesirable type.

Dated the 26th July 1912.

From— { C. M. Gandhi, Esq., High Court Pleader, Surat;
Thakeram Kapilram, Esq., Vakil High Court, Surat;

To—M. S. Advani, Esq., M.A., Bar.-at-Law, District Judge, Surat.

With reference to the proposals made by the Dekkhan Agriculturists' Relief Act Commission and forwarded by you to us for our joint opinion, we have the honour to report as follows :—

1. We are of opinion that if the system of keeping the accounts in duplicate and making the same conclusive evidence in court as suggested by the Commission be introduced, it will work more injustice to the debtors. Debtors as a class are too weak and too ignorant to act on a footing of equality with an unscrupulous money-lender. They would, when hard pressed with monetary difficulties, be ready to sign or attest or mark any writing; then there might be many cases of absolutely illiterate debtors, who might be induced to put their thumb-impressions on any writing made by the creditor under misrepresentation; and if such writings were to be made the only conclusive evidence of money-lending transactions between a money-lender and an agriculturist debtor, more injustice is likely to be done.

It is next proposed that no plaint shall be entertained unless it were accompanied by a copy of such an account. So if an agriculturist has to bring a suit for account and if he has lost the copy supplied to him, his suit cannot be entertained.

If such an account be not made conclusive evidence, then there is no harm in introducing such a system as a tentative measure, if the operation thereof be confined as it must be to transactions subsequent to the date of the introduction of the system, and to literate creditors only.

It will be better if such duplicate accounts be ordered to be kept in books paged and sealed and issued from a Government office and sold by stamp vendors and postmasters.

Many agriculturists get lands on better terms from persons who are not professional money-lenders, and such people are generally honest. To believe money-lenders will tend to confine money-lending to a class of less scrupulous and honest people.

No. 22.

Broach, dated the 30th July 1912.

From—Otto Rothfeld, Esq., B.A., I.C.S., Collector, Broach;

To—The Hon'ble Mr. S. R. Arthur.

I have the honour to express my regret that I have been prevented from replying to your No. 54 of 3rd July earlier, owing to the press of other work.

2. The system of accounts (Bharatvahi Khata) which you propose is in force in this district in all dealings between savkars and in all good firms even when they deal with outsiders. In my opinion there is no difficulty in extending it by law to all transactions in Gujarát, on the lines proposed. In Gujarát certainly, the cultivator would very quickly learn the simple rules proposed and will appreciate their advantages and insist upon their fulfilment. A few cultivators may suffer by being willing to acquiesce in the conditions not being carried out; but they will be those who at any rate under the present law ruin themselves by conniving at *benami* sales, etc.

3. In short, I am of opinion that the proposed system will not add any new disadvantages while it will introduce many advantages for the first time. And there can be no doubt that you are correct in saying that the present practice of the Courts "almost inevitable as it now is, puts a premium on dishonesty".

No. 23.

Broach, dated the 23rd July 1912.

From—E. H. Waterfield, Esq., I.C.S., Acting District Judge, Broach;

To—The Hon'ble Mr. S. R. Arthur, I.C.S., on special duty.

I have the honour to reply as follows to your letter No. 54 of June 1912.

2. I have unfortunately no personal experience of the working of the Dekkhan Agriculturists' Relief Act in Gujarát, as I have been less than a month in this district, and when I last served in Gujarát the provisions of the Act were not yet applied. My views are, therefore, based to a great extent on the opinions of the Sub-Judges, including Mr. Mohanrai Dolatrai, who gave evidence before you when you visited Broach, and of some of the leading pleaders in this Court.

3. The system of duplicate accounts does not exist in this district, but all whom I have consulted are unanimously in favour of its introduction. One account should be kept by the creditor and one by the debtor, and all entries should be attested by the signature or thumb-impression of both parties in each account. It is not considered necessary that the creditor should keep separate books for each of his debtors; it is sufficient if he keeps separate khatas. But each debtor should have his own separate pass-book.

4. The majority are in favour of making the accounts conclusive proof of the entries, unless objection has been taken by either party within 30 days from the date of the entry, and, subject to this exception, no evidence should be admitted in variation of those entries. If any payment is not entered in the accounts, or is wrongly entered in them, the aggrieved party should make an application to the Sub-Judge within 30 days of the alleged payment, failing which no evidence should be admissible to prove either the payment or the incorrectness of the entry.

5. As regards the paging and sealing of account books there is no objection in the case of the debtors' pass-books. They might be issued from a Government office and kept for sale at a nominal price by the village officers. In the case of the money-lender, however, the system seems open to objection. It would not cause inconvenience to the professional money-lender, but the man who lends money only occasionally to oblige a friend, relation, or servant, would object to a rule which obliged him to buy an official account-book; he would consider it an unnecessary expense as he would not be likely to use all the pages, and he would object to the trouble of procuring it. The double attestation seems to be a sufficient safeguard against fraud on the money-lender's part, and the introduction of official account-books seems likely to put a stop to all but professional lending.

6. For a similar reason the general opinion is against the licensing and registration of money-lenders. The superior class of savkar would resent it as humiliating, and the man who wished to lend money to oblige his friend or relation would be prevented from doing so by the knowledge that he could not recover it unless he went to the trouble and expense of getting his name registered, which he would not care to do.

7. The general opinion is against inspection of accounts. It certainly seems unnecessary if the accounts are to be conclusive evidence of the entries, and creditors of all kinds would probably object very strongly to it. In any case, I do not think that the inspection should be made by any officer of lower rank than an Assistant or Deputy Collector.

No. 24.

Ahmedabad, dated the 2nd August 1912.

From—H. L. Painter, Esq., I.C.S., Collector of Ahmedabad;

To—The Hon'ble Mr. S. R. Arthur, I.C.S., on special duty, Bijápur.

With reference to your No. 54, dated $\frac{29\text{th June}}{3\text{rd July}}$ 1912, I have the honour to append herewith two reports on the subject from Messrs. Jethalal Varajbhai, a retired Deputy Collector and large landlord, and P. H. Raval, Mamlatdar of North

Daskroi, and to state that my own opinion is that though some kind of pass-book system seems feasible, I have very great doubts as to whether it would be found materially to improve matters. In any case any kind of routine official supervision over accounts would, I think, be a mistake. It is not by letting the borrower believe that he can look for a champion in the local revenue officers that we shall encourage him to be more careful in dealings with his money-lender, but by educating him to read and write and to acquire a little rudimental arithmetic. The more writing and red-tape we infuse into private concerns, the more likely is the astute bania to get the better of the illiterate or semi-illiterate borrower, but a simple pass book, to be written up by the money-lender but kept by the borrower, entries in which would be presumptive evidence of transactions, might be tried, though I have my doubts as to how the system would work in practice. The idea of licensing money-lenders suggested by Mr. Jethalal Varajbhai appears to me utterly impracticable and highly objectionable.

2. I regret that pressure of work does not permit me to go more deeply into the subject, which requires special study and investigation, for which there has been little opportunity in Gujarát this year.

Ahmedabad, dated the 24th July 1912.

From—The Mamlatdar of Daskroi;

To—H. L. Painter, Esq., I.C.S., Collector of Ahmedabad.

With reference to your letter No. R.-2747, dated 9th July 1912, forwarding letter from the Hon'ble Mr. Arthur, on special duty, regarding the proposed system of accounts in transactions in which one party is an agriculturist, I have the honour to submit my observations as follow.

2. The provisions of Chapter IX of the Dekkhan Agriculturists' Relief Act are now applicable to the four districts of the Deccan and they have more or less remained a dead letter even in those districts. There is no wonder that it should be so; the relation between the creditors and debtors is peculiar and depends upon the needs of the parties. The creditor, who is generally a savkar in a village, exercises a very great influence over the agriculturists who have running accounts with him. Ordinarily the clients will not like to go cross with him in small matters. The relation between them should be of a friendly character and should not be wholly contractual. The savkar is ordinarily ever ready to help his debtors in good as well as bad times, and the relations between them should as far as possible be unfettered by too many technicalities of law.

3. Agriculturists of average credit (patidars, for instance) in a Gujarát village get money from a savkar on peculiarly easy terms, *i.e.*, the rate of interest is quite reasonable. Where the agriculturists (*i.e.*, Kolis, Thakardas, Garasias) of low credit are concerned, there is some scope for putting premium on dishonesty; also the rate of interest is exhorbitant. The reason is not far to seek. There is always danger of the loss of money and the chances of getting interest are wholly out of question. The creditor will therefore take care to secure himself against the prospective loss by debiting against his client more than what he really pays.

4. Such fraudulent transactions are also more common among the Garasia Talukdars and big Inamdars who have to deal with big savkars. The middleman or the person who brought about the transaction is also allowed a liberal commission. The savkar goes on adding the interest at Diwali time. The compound interest begins to run in the interval as no repayment either in part payment of the principal or the interest is forthcoming. The season may be bad or there may be accidental occasions (marriage, death, etc.), on which over and above the amount already borrowed the clients have to borrow more money to meet these occasions. They have their ancient family pride and to preserve their family dignity as scions of the ancient nobility they incur very heavy expenses on such occasions. As a rule, the repayments are rare and the borrowing occasions are frequent and the running account on the debit side swell enormously in a few years. In support of my above remarks I may quote the instances of the Garasia Talukdars of this district whose debts were settled by the special officer, Mr. Mohanlal Lallubhai, who worked under the able supervision of Mr. Tupper.

The debts were settled in most cases by payment of about less than half the amount claimed by the savkar. In all these cases most of these estates have been freed, but I am afraid that through the inherent folly they may again fall into the pits from which they have been taken out through the kindness of Government. The debts were very old and the running accounts were voluminous. These are instances of big landholders and Talukdars. These debts were settled only on account of the strong official interference, otherwise they would have run for years and years and these debtors can hardly have extricated themselves from the meshes of the savkars, and the position of these men would have been more ruinous.

5. In the case of ordinary cultivators who have got some credit the transactions are mostly free from fraud and the accounts are cleared in a reasonable time.

6. In the case of poor cultivators who have practically no credit and those big landlords, the things are different. There the fraud runs almost through the whole account. They are mostly illiterate and are always at the mercy of the savkars and are always in need of some sort. Any legal provision however well meant and well directed will remain a dead letter.

7. I am therefore of opinion that the things should be left as they are, as far as possible. I would only suggest that a pass-book like the one used in the post office savings bank may be insisted upon to be supplied to the debtors. The transactions, *i.e.*, payment and repayment as between the creditor and debtor, as they take place must be entered in these pass-books, a column being added for noting interest. Every transaction should be signed by the savkar. There is no necessity for the debtor to put his thumb-impression. The simple fact that the savkar puts his signature over the transactions may be deemed sufficient. Ordinarily the creditor is a savkar and a bania and when he puts in his signature over a document which he is bound by law to give to the other party there is very little scope for dishonesty. What I mean is that the chances for dishonesty will be minimized unless it be done with the consent of the other party, in which case there is no chance of detection. All that can be safeguarded is dishonesty on his part, and that object underlies the whole legislature of the Dekkhan Agriculturists' Relief Act.

8. As at present, the savkar bania if he be dishonest has ample scope to debit any amount he likes in the debtor's account and the debtor for fear of incurring the displeasure refrains from putting questions as to his accounts. The simple fact that he is bound to give a pass-book and that he has to enter under his signature all transactions under the provisions of law, and that the pass-book is to remain with the debtor who is at liberty to show it to the outside world are sufficient in themselves to deter him from dishonesty. He knows very well that if the debtor, who is usually illiterate, shows his pass-book to any one who is literate and if fraud is found he renders himself liable to be dragged in a Criminal Court. This fear is most prominent in a bania who, as a rule, would avoid falling under the clutches of criminal law as much as he can. As a general rule, the savkar bania fears a criminal jail too much.

9. Passing of a receipt for payment of money by debtor (section 64 of the Dekkhan Agriculturists' Relief Act.) is not worth much. He is free to debit subsequently in his book any amount if he is inclined to be dishonest. When the accounts run for years together, the debtor does not know where he is.

10. The provisions for giving a pass-book on demand (section 66) and furnishing a statement of account on demand (section 65) are also not worth much, as the demand from a needy person is made only on rare occasions. He is least likely to offend his savkar whom he regards with reverence.

11. The only provision which in my humble opinion ought to be made is that it should be made obligatory on the creditor who is generally literate so far the writing up of simple accounts at any rate is concerned, to give in a pass-book to the debtor and to fill up all transactions in it under his signature, noting interest therein at Diwali time. Illiteracy is exceptional in a bania class even in villages. Obligation to give the pass-book should rest on the illiterate as well as literate savkar creditor.

12. This pass-book should be taken as very strong presumptive evidence in support of the creditor's dues and debtor's liabilities and should be relied upon,

except where fraud is apparent, and oral evidence to the contrary is overwhelming. If the pass-book is not given, the Court shall presume against the creditor and the onus of proving anything in excess of the items shown on the debit side in the pass-book should fall heavily on the creditor who is bound to prove his case to the satisfaction of the Court.

13. No further provision is necessary so far as I can see, if we want to preserve the good-will between the parties eventually for the economic credit and benefit of the agriculturists. The debtor might say that it is the law and it should be obeyed. The creditor would not in that case feel that it is the debtor who obliges him to give a pass-book and the relations will remain amiable.

14. The creditor may keep his accounts in his own usual method in a big account rojmel with other subsidiary books if he likes, but the pass-book should be separate for each debtor. The items in the pass-book ought to tally with the accounts kept by him. The difference will be only in the mode of writing the accounts. This is no doubt like the duplication of accounts, but it is not exactly the same. The pass-book should show the credit and the debit side and the figures for principal and interest and no more writing except that the items to be written in words at each transaction. The writing work should be almost absent in a pass-book. The debtor's and the creditor's name being given at the top.

15. The safeguard of the procedure will be :—

(1) There will be a check on dishonesty and falsification of accounts.

(2) The debtor, who cares to know his debts, will have it ready in his pass-book, which will be so to say a counter-account.

(3) Least possibility of fraud, unless it be with the collusion of the parties in the beginning, as the creditor knows the law and will be deterred from coming under the clutches of law as much as he can.

16. The pass-book may be in manuscript form like the old ryat's receipt book for land revenue recently superseded, but columns to be provided similar to those in a savings bank pass-book which should almost form the pattern of the proposed pass-book. They may be paged but not sealed. No further official interference is needed as regards these books. The reason is that it is impossible to find out the debtors and creditors in want of them all over the world and we cannot get men for properly distributing them even if we undertake to do so and the trouble involved will be insurmountable.

17. In this connection I may note that the law does make giving of receipt obligatory (section 64) only in the four districts. It is therefore not too much if the pass-book can be substituted as obligatory. It should further be provided that no suit should be entertained unless it is proved that the creditor gave the pass-book which should be called for from the debtor when he first makes his appearance.

18. This procedure is evidently in the interest of both the parties. By this procedure the contested cases will be minimized and both the parties will know where they stand and the contest will be restricted to a very few cases. Most of the claims will be settled privately and the resort to the Civil Court will be extremely minimized.

19. I cannot find solution of the question in cases in which the parties agree to allow a larger sum to be entered in the accounts than actually advanced. Collusions in such cases are common where the one party is more needy and hard-pressed and the other is dishonest and unphilanthrophic. Such cases should of course be let alone.

20. There is no necessity for registering the money-lenders as they are likely to spring up like mushrooms, and it would be a very hard measure to limit their number by compulsory registration.

P.S.—It should also be provided that the creditor should take on the first occasion the debtor's receipt in his account book, in token of the issue of the pass-book ; when the law on the point is widely known, there will not be much difficulty in carrying out its provisions.

Ahmedabad, dated the 24th July 1912.

From—Mr. Jethalal Varajbhai, retired Deputy Collector and Honorary First Class Magistrate;

To—H. L. Painter, Esq., I.C.S., Collector, Ahmedabad.

Referring to your endorsement No. R.-2747, dated 9th instant, below No. 54 of 3rd idem from the Hon'ble Mr. Arthur, on special duty, calling upon me to offer remarks on the subject of Chapter IX of the Dekkhan Agriculturists' Relief Act and the difficult question of receipts and accounts in reference to transactions in which one party is an agriculturist, I have the honour to state as under.

Almost all the agriculturists are entirely illiterate and not even able to read or write and deserve to be protected from the clutches of the unscrupulous and dishonest money-lender, and the subject of having correct accounts of receipts and payments by an agriculturist is of very great importance. I may mention that opinions differ as to the percentage of dishonest savkars to their total number. My own opinion is that it is very small though the rest charge certain sums by way of discount, etc., once for all, in addition to interest, so as to bring it up to one per cent. and more per mensem, but do not directly deceive the debtor by entering into the account short payments, etc., etc.

From the experience I gained during my service of more than 35 years' standing and after giving my careful consideration to the subject I had come to the conclusions that the best way to solve the difficult question of accounts, without leaning on one side or the other, was to have resort to legislation providing a system under which (1) a person intending to carry on business of lending money to an agriculturist must obtain a license from the Collector, (2) a Civil Court cannot take cognisance of a suit to recover money from an agriculturist unless the person bringing the suit produces the original license or a true copy thereof, (3) certain conditions should be prescribed before the license is granted, one of them being to keep regularly and punctually the account of receipts and payments and to charge certain rate of interest and nothing more, (4) a breach of any of the conditions attached to the license would make the licensee liable to a fine on conviction before a revenue officer not lower in rank than a Mamlatdar, (5) the license must be immediately revoked on a similar second conviction as also on fraud being proved against a money-lender, and (6) the account should be open to inspection by any Revenue officer not lower in rank than a Mamlatdar's first karkun, as well as by members of the village punch to be appointed from time to time. The system, if introduced, would, as observed by the Hon'ble Mr. Arthur in paragraph 14 of his letter, certainly encourage honesty among money-lenders, and diminish the risk of loss to the agriculturists. It is, however, questionable, it seems to me, if it would be acceptable to the general public under the current trade policy.

The system of preparing a separate account in duplicate of the creditor's dealings with each agriculturist, proposed in paragraph 5 of the Hon'ble Mr. Arthur's letter under reply, is excellent and is just what is desirable and wanted, if properly worked. But for various reasons, it seems, the entries in the khata would not, it is feared, be made regularly and punctually. It resembles our old system of preparing the ryots' receipt book (Village Form No. 12) to be supplied to the khatedar paying his dues to the village accountant. It was a copy of the khatedar's account in the village ledger (Village Form No. 5) and furnished the necessary information, *viz.*, the land for which the assessment or quit-rent was due, the amount due by the khatedar to Government and the payments made by him from time to time. I would submit that most of the agriculturist-debtors are as yet illiterate and any attempt to obtain their thumb-impressions in the account itself would be futile and perhaps lead to the commission of frauds, the impressions in more than 80 per cent. of cases being found not clear but only black spots or marks. In such a state of things it would be impossible to ascertain the person whose impression it was. To remove this difficulty it would be well if the copy of the account in possession of the money-lender is made open to inspection by the members of the village panch to be appointed from time to time and to be informed by the agriculturist immediately after he receives or makes a payment. It would be better still if the transactions actually take place in the presence of one of the members of the panch and if he attests the entries in the duplicate khatas.

With reference to paragraph 10 of the letter under reference, I don't think it would be too strong a measure to make the duplicate accounts conclusive evidence of the entries made therein. All oral evidence to prove other allegations, if any, must be rejected unless, of course, fraud is apparent, in which case it must be accepted. I don't think there is any objection to make the proposed system obligatory on all money-lenders literate or illiterate. The number of those belonging to the latter class must be very few and limited, but it is not to be forgotten that a money-lender though illiterate is shrewd and intelligent enough and is careful to see that a proper account is written up by somebody for him.

With respect to the query contained in paragraph 13 of the letter under reply, I would think that it would hardly be practicable to supply from the Government Printing Department such a large number of books to the money-lenders.

Many unforeseen difficulties are likely to arise in practice. The number of books would be enormous. There would, however, be no objection for the pages of the books produced by the party concerned being numbered and stamped with the seal of the Mamlatdar of the taluka and an endorsement made on the last page under that officer's signature showing that there are so many pages in the book and that they are stamped with the seal. This will throw somewhat great additional burden of work, though of quite a simple nature, on the Mamlatdar's staff, and it is feared extra establishment would be necessary. The attestation of entries will be a sufficient safeguard.

With regard to paragraph 15 of the letter under reply I would think that the account be treated as conclusive proof unless fraud is apparent. I think it would be much better to test the entries in the book by the Assistant Collector or Mamlatdar comparing them at the time of the village inspection The test may be confined to a few accounts only, but it should be thorough. It is also desirable that these officers should ascertain by putting questions to the debtor as to the amount or amounts he received as loan and that paid by him to the creditor. The officer making the rujuvat should put on his initials in token of his having done so. This will, I fancy, have a very good moral effect.

No. 25.

Ahmedabad, dated the 13th July 1912.

From—B. C. Kennedy, Esq., I.C.S., District Judge, Ahmedabad;

To—The Hon'ble Mr. S. R. Arthur, on special duty, Poona.

With reference to your No. 54 of the 29th June 1912, I have the honour to say that I do not approve of the proposed provision.

2. The fact that in the four districts there has been legislation on the lines indicated and that it has proved a dead letter is fairly good presumptive evidence that any such legislation is futile. Take Sholapur. Here you have the excellent example of Warud. No one else there or in Bijapur follows the example. Hence it appears that either the system is not profitable to the honest money-lender or that there are no other honest and intelligent money-lenders.

3. Most money-lenders have a great objection to giving receipts. If a cultivator asks for one the money-lender says "my father never gave your father a receipt, why should I give you one. Pay up your balance and find a new money-lender." It is therefore hardly the fault of the debtor if he does not insist on a receipt.

4. The matter of receipts is not so simple as it appears. Take a mortgage with possession, the land being re-leased at a cash rent to the brother (undivided) of the mortgagor, cash rent of course never being paid and the mortgagee-landlord receiving all that he can in grain or produce. It is a bit difficult to say how the rent should be entered and in whose name. Then there are havalas. The debtor cannot be relied on to appear in person before the original creditor.

5. I quite recognize the rather unsatisfactory state of affairs at present and if I thought that legislation on the lines proposed would be successful I should be glad of it. But I cannot regard with equanimity the proposal to give such extreme

weight to money-lenders' books which will, I am convinced, continue to be kept in the way best suited for the keepers without the debtors having any efficient control. If a money-lender refuses to credit or makes false entry, what is the debtor to do? To change money-lenders or prosecute the money-lender? They know little of village life who suggest either.

6. The whole tendency of the Act is to do away with rigid presumptions and the exclusion of parol by written evidence. If we are to regard the debtor as a free agent, why go behind bonds, and tear up solemn contracts? If he is not a free agent, why regard it as his fault if his creditor does not fill in his pass-book?

7. I do not see that the proposed change would affect matters for many years. All accounts up to date would have to be gone out in the old manner.

8. The question of registration or licensing of money-lenders is an interesting one, but I am not in a position to discuss it parenthetically.

9. If there is any idea of actually legislating on the proposed lines, I do earnestly request that it be introduced tentatively. The bane of the Act as it stands is *a priorism*. Let us not any more create an ideal "money-lender" and "ryot" and legislate for them, but let us try what experience suggests. I do not regard instances in Native States as of any empirical value. The scheme of formal accounts is excellent if workable. If not workable, it will be disastrous. Government should be given powers to extend such provisions to any area, but at first such provisions should be in force in one or two carefully selected talukas in each division only. I would also strongly object to making account books irrefragable evidence. Let them, if necessary, be strong presumptive evidence. Also I object to arming them with any apparent official sanction in the way of seals, stamps or the like.

No. 26.

Kaira, dated the 31st July 1912.

From—A. Chuckerbutty, Esq., I.C.S., Collector of Kaira;

To—The Hon'ble Mr. S. R. Arthur, on special duty.

With reference to your No. 54, dated 29th June—3rd July 1912, I have the honour to forward herewith the reports received by me and to observe as under:—

(1) The system of dual account is not wholly unknown to this district. Some clients of savkars do maintain dual accounts and the accounts are squared at any time within a period of three years. The system is, no doubt, useful to both the savkars and agriculturists.

(2) Some books might be offered for sale as an experiment to see if any savkar would take to them voluntarily.

Like you, I cannot formulate any infallible scheme. I should, however, like to try the effect of exacting that all regular money-lenders must take out a license, be registered and that any unlicensed money-lender could have no recourse to a Civil Court.

I would suggest restricting this at first only to such areas as might be recommended by local officers.

Matar, dated the 16th July 1912.

From—The Mamlatdar of Matar;

To—The Assistant Collector of Kaira, N. D.

With reference to your No. 2441, dated the 11th instant, I have the honour to submit the following report.

2. I had collected all the banias of this place who have dealings with the agriculturists. I carefully explained to them the contents of the Hon'ble Mr. Arthur's letter and ascertained their views, which are as under:—

(i) The money-lenders desire that the definition of an "agriculturist" should be made clear. At present a man may bring forth the plea of his being an agriculturist at any stage as suits his convenience. They suggest

that the proposed duplicate account books should be kept for sale with the Mamlatdars. Whenever a person wants to open an account with a savkar, he should apply to the Mamlatdar who may issue the account books in duplicate in his name if the Mamlatdar on inquiry finds the applicant to be an agriculturist according to the legal definition of the term. Their main point is to have settled once for all before entering into any money transactions whether a man is an agriculturist or not. Some plan should be devised to secure this end and they propose the above plan.

(ii) They all like very much the proposal about stamped account books and duplicate pass-books. The future transactions will work well. But what about the old dealings, to be brought on these pass-books. They suggest that a special court of arbitration ought to be appointed and all the old dealings should be definitely settled and entered into the pass-books. Where the parties agree, the arbitration court should direct entry of the accounts according to the settlement arrived at. Where the parties disagree, the accounts should be placed before the court of arbitration, which should dispose of all disputed cases. These references to the court should not be costly and no court-fees should be levied.

(iii) They say that many of the shopkeepers have transactions for goods advanced and no interest is charged. The system of pass-books should not be applied to them. The daily transactions are so numerous that it will not be practicable for a shopkeeper to maintain the pass-books.

(iv) They further say that the system of pass-books should not be applied to the collection of rents. The rents are collected by their private peons, and it will not be possible to fill up these books.

(v) In short, they suggest that the system should be confined to money-lending and other transactions *producing interest.*

(vi) They are not in favour of the license system.

Such are their views on the proposals of the Hon'ble Mr. Arthur.

3. As regards my personal opinion I am in favour of adopting the scheme of licensing savkars intending to deal with agriculturists and of maintaining the proposed duplicate pass-books. There is much force in the first argument of the savkars consulted. A savkar ought to know definitely from the commencement whether the man with whom he has to deal is to be treated by Courts as an agriculturist or otherwise, if any civil suits subsequently arise. At present a man having or cultivating some land may be dealing for years together as a non-agriculturist, and if he fails in his business and is sued, he just tries to put forth the plea that he is an agriculturist and claims benefits of an agriculturist at any time according to his sweet will. The present uncertainty requires to be remedied, in some such way as suggested by the consultants. I am further of opinion, all transactions on account, whether bearing interest or not and whether they are rent collections or transactions of other kinds, they all ought to find place in the duplicate pass-books. Thus whether an agriculturist takes money on interest, whether he pays rent, or re-pays loan or pays interest or whether he gets an advance for seeds or subsistence, in short, whatever may be the nature of the transaction, it ought to find place in the duplicate pass-books. There is also much force in their argument about the settlement of the old debts before their entry in the new pass-books. Unless the old accounts are settled, it will be practically of no use to introduce the proposed system. So some speedy measure ought to be devised to once for all settle all old transactions and to enter the results in the new pass-books.

Nariad, dated the 16th July 1912.

From—The Mamlatdar of Nariad ;

To—The Assistant Collector of Kaira.

With reference to your No. 2441, dated 11th instant, I have the honour to report respectfully that the proposal of keeping duplicate accounts by savkars dealing with agriculturists is a good one. Indian commercial morality is too low ; an intelligent man is always inclined to deceive the innocent and trustful agricul-

turist; the minds of the agriculturists are trained to be subservient to the savkars who are able to ruin them at any moment; it is only that Dekkhan Agriculturists Relief Act that has saved the people and made them a little independent. The interference by Government with savkars in their dealings with the agriculturists will not be liked by them, but in the long run it would be a very beneficial measure in the interests of both and teach them the ways of honest dealings and save much of the time of the Civil Court.

2. Education and independence of character have not advanced among the agriculturists. The class of agriculturists, which is ruthlessly tortured, is Dharelas, Kolis, Chothares and Dublas; these persons are not strong enough to demand credit into accounts on every payment. I have seen savkars postponing the credit pretending that the books are at home or that he has not time, and therefore the account books should not be made conclusive proof and it may be regarded as presumptive evidence.

3. The account books cannot be issued from Government Depôt; the system would be too elaborate and expensive to Government. The savkars should bring the books for paging and sealing at the office of the Mamlatdar and pay some small fee; a special seal should be made for the purpose and kept by the Mamlatdar.

4. The system of registration and license of money-lenders is worthy of consideration. In my humble opinion it should be tried in some cases; it would encourage honest dealings and give some status to the savkars by the license; his accounts will be relied on by the Court and he will be saved much time and trouble; if the licenses are granted, the Assistant Collector and the Mamlatdar may be authorized to inspect the accounts.

Camp Kaira, dated the 20th July 1912.

From—R. B. Milne, Esq., I.C.S., Assistant Collector, S. D., Kaira;

To—The Collector of Kaira.

With reference to your No. R.-3577, dated 9th July 1912, I have the honour to report that as contemplated the interests of the illiterate and the foolish will not be fully safeguarded under the proposed system. I cannot, however, concur in regarding these as a "minority", and as it is still as advisable as ever to have real agriculturists as landowners, I consider these classes should be further safeguarded under the Act.

2. The proposed system of duplicate accounts does not seem feasible. In the first place, they would never be kept: it is always open to the savkar to say that he did keep them and that the debtor is keeping them back. In the second place, they would never be produced. They are written by the savkar and he could commit fraud either by enhancing the amount actually lent or failing to record payments: the duplicate accounts would corroborate him and if any suit were lodged, the debtor's pleader would at once advise him to destroy the duplicate. The system would only work if the debtor were able to force the bania to keep a duplicate account book and if he had the sense to have every entry explained to him by an independent person. This is not the man for whom we are legislating. The ordinary agriculturist cannot tell the bania to do anything he does not want to do, nor would he take the trouble to have an entry corroborated the meaning of which he imagined had once been explained to him.

3. If banias were forced to keep account books supplied by Government, pages stamped and numbered, and if it were laid down that every debit entry therein was to be attested by a literate fellow casteman of the same village, the entries as to amounts lent may be made binding on both parties. This would be an equal protection to both. It would not be difficult for the debtor to get some such man to go with him to the bania and the entry would be properly explained to him. If then he chose to have a debit entry made in excess of the amount actually lent, no legislation can help him.

A bania can hardly be expected to take finger prints accurately; most of them would be botched and a false and illegible print could not be distinguished from the others.

4. The question of payments is more difficult. The agriculturist will not insist on the savkar entering payments. If the duplicate books are kept, he will not take the trouble to find out whether an entry, which he imagines has been made, has really been made.

I do not think it too great a hardship to insist on savkars presenting six-monthly accounts to their clients. If this were done through the post, the account being written up on a Government form with a notice that any objection to the statement of accounts must be taken within one month, a copy being kept in a register in the post office, and a postal receipt attested as in paragraph 3 forwarded to the savkar, this statement of accounts may be taken as binding on both parties. Extra establishment would probably have to be employed for the two months in which these statements have to be presented, but a small charge in addition to the postal charge for the statement of accounts would cover this. The attestation by a literate fellow casteman would ensure the statement reaching the debtor. There would be no collusion between the bania and the post office officials, as the latter would not risk entering up a different statement in the register from that in the posted statement; if the debtor took action, the fraud would be apparent at once and no official would care to undertake such a risk. The illiterate agriculturist does treasure any piece of paper with writing on it and being in ignorance of the contents he would take the trouble to have them explained. The form of attestation secures the presence of a literate fellow casteman at the time of receipt.

5. Mr. Arthur proposes to ensure payment being entered in the duplicate accounts by having the entries checked by the Assistant Collector and Mamlatdar. I need not point out how much routine inspection work has increased in recent years. A fatal objection would be that inspecting officer would not know who were debtors and the village officers in collusion with the bania would not present those debtors whose accounts were false. I have already stated that I do not think those duplicate accounts would ever be kept.

Camp Kaira, dated the 20th July 1912.

From—J. B. Hartshorne, Esq., I.C.S., Assistant Collector of Kaira;

To—The Collector of Kaira.

In reply to your No. R.-3577 of 9th July 1912, I have the honour to submit the replies received from the Mamlatdars of Mehmedabad, Matar and Nadiad. It will be seen from them that they have consulted and got the views of some respectable persons.

2. It seems that the system of dual accounts is not entirely unknown in this district. I think that its introduction by the means suggested would produce a good result, and the spread of education will help the system to become practically useful.

3. Some books might be offered for sale as an experiment, to see if any savkar would take to them voluntarily: or the leading account book workers might be given some inducement to put a fixed type of book on sale. The savkars would probably recoil from having any signed and sealed book, and would think they were being put under undue compulsion. It is also questionable whether Government should be concerned in private transactions to this extent.

Mehmedabad, dated the 15th July 1912.

From—Chhotalal Naranji, Esq., Acting Mamlatdar of Mehmedabad;

To—The Assistant Collector, Northern Sub-Division, Kaira.

With reference to your No. 2441 of 11th instant I have the honour to report I have consulted three leading savkars of Mehmedabad—Messrs. (1) Purshotam Chunilal, (2) Chhotalal Samaldas, (3) Brijlal Asharam—and one of Mankua, Mr. Jaychand Motichand. Their statement in Gujarati, is hereto appended, from which it will appear that they are in favour of the proposals of the Commission

contained in paragraph 5 of the Hon'ble Mr. Arthur's letter No. 54 of 29th June—3rd July 1912. I am of opinion that if the system therein proposed be introduced the work of Civil Court will be much facilitated and honest money-lenders will consider that their position is much more secure than at present and they will be encouraged to enter into their money-lending business with agriculturists to a greater extent.

2. If the system be introduced, I think it would be advisable in the beginning not to make the duplicate account conclusive proof of the entries till the average cultivator has learnt the system. It may be made conclusive proof a year or two after the system is introduced.

3. The system of keeping duplicate accounts should be made obligatory on all money-lenders, literate and illiterate, as the latter can get their accounts kept by literate gumastas.

4. I think the money-lenders will resent the idea of keeping accounts in books issued from Government offices and will also find it difficult to keep accounts in such books. I also think they will greatly dislike, especially the honest money-lenders, the introduction of system of registration and license.

5. A few literate cultivators keep their own books and take them to the money-lender when they go to receive or repay money and get the entries made by the money-lender.

Camp Dakor, dated the 23rd July 1912.

From—Rao Bahadur Bulakhidas Bapuji Trivedi, District Deputy Collector, Kaira;

To—The Collector of Kaira.

With reference to your No. R.-3577, below the Hon'ble Mr. S. R. Arthur's No. 54, dated 29th June 1912, I have the honour to state as under.

2. The proposed system of account keeping is not in force in this district. But accounts are maintained invariably only by the money-lenders and not by the agriculturists.

3. It is true that the provisions of the Dekkhan Agriculturists' Relief Act, sections 64, 65 and 66, would be generally beneficial to the agriculturist, but I am afraid the money-lender would always try to make a breach thereof. The reason is that the ignorant agriculturist would rather suffer a loss than bring a complaint against the savkar for his evading the above-mentioned provisions of the Act. Again the accounts kept by the money-lender are very often unreliable. He being generally a shrewd man thinks himself of taking care against future loss in case the agriculturist goes to a Civil Court, and so he takes precautions to meet this contingency by debiting more to the account of the agriculturist than what he actually advances, thinking that in case the Court will curtail something from the debt as it stands he would get a sufficient amount of margin for his profits. There being in this way no reliable evidence in transactions between the money-lender and the agriculturist, the Court seeks a middle course, no reliance is placed on the statements of either party and the amount sought to be recovered is cut down to some extent.

4. To surmount these difficulties the suggestions made in the Hon'ble Mr. S. R. Arthur's No. 54, dated 20th June 1912, for keeping a separate duplicate account are most praiseworthy. The introduction of this system will place the money-lender and the agriculturist on an equal footing of security and it will also act as a strong check against making false entries.

5. As regards the supply of duplicate books I am of opinion that the books should be issued by Government, paged and sealed.

6. As regards the proposal of registering and licensing money-lenders I am of opinion that at the outset the proposal might as well be kept in abeyance till the system of duplicate account books has been current for some years.

7. As regards the question of inspecting officers I think that the district officers and Mamlatdars are over-burdened with work, and therefore I am of opinion that special inspectors should be appointed by Government to inspect the accounts.

This is of course an additional burden on the State, but in course of time the poor agriculturist will be very happy and there would be no chance of the latter being deceived by the usurers.

Kaira, dated the 22nd July 1912.

From—The Huzur Deputy Collector, Kaira;

To—The Collector of Kaira.

In reply to your order No. 3577 of the 9th instant, I have the honour to report that after the introduction of the Agriculturists' Relief Act it is true that some of the money-lenders have given up all money-lending business with agriculturists.

2. I think that honest savkars may be *induced* to adopt the system if they have the assurance that the new accounts thus kept will be conclusive proof of the entries therein made.

3. It is my impression that agriculturists are now a days prone to tell more lies than they were used to tell some years ago. They are under the impression that Government is on their side, and with that impression they deny everything that the savkar says in the Court, because they believe that by doing so they gain something and do not lose anything.

4. It is my impression that everything depends on the credit and solvency of the agriculturists. An honest savkar has as his clients persons of the most respectable class. He has very few suits to file and his clients have nothing to aver against them. His clients can borrow money from him without any security and at a very low rate of interest.

5. Thus persons of low credit and inadequate solvency have to resort to savkars of the proportionate respectability and honesty, and their neediness and poverty compel them to put up to a large extent with some dishonest practices of their savkars, and it is for such class of agriculturists that the proposed measures are required to be adopted. But the need for these measures is not so great as it was some years ago in the time of their forefathers. In the first place if these measures have been tried for so many years in the four districts and proved fruitless, it is not desirable to try them in other districts. The need for them will diminish as people become more and more enlightened every day. With their enlightenment the dishonest practices of the savkars will to a great extent disappear.

6. I have consulted the savkars of Kaira on the subject, but have not recorded their statements because they have to say only one thing, *viz.*, the repeal of the whole Act.

No. 27.

Thana, dated the 13th July 1912.

From—J. A. G. Wales, Esq., M.A., I.C.S., Collector of Thana;

To—The Hon'ble Mr. S. R. Arthur, Esq., I.C.S.

With reference to your No. 54 of the 4th July 1912, I have the honour to state that the system outlined in your paragraph 5 seems to me quite feasible. The duplicate accounts—attested in the manner prescribed—should be conclusive proof of the entries and the system should be obligatory on all money-lenders.

2. I see no reason why Government should issue the books in which the accounts are to be kept.

3. I am unable to suggest any system of checking the accounts; such a check would be of an inquisitorial nature, and in my opinion undesirable. In any case it should not be made part of the duty of Assistant Collectors and Mamlatdars—these officers have quite enough to do at present with their legitimate duties, and I strongly deprecate their meddling with purely private matters, such as savkar's accounts.

4. The registration of money-lenders is not in my opinion necessary; it would be quite easy to avoid registration, and I do not see what is to be gained by it. The conditions which led to the enactment of the Money-lenders Act, 1900, in England do not exist in rural lending and borrowing in India.

Ahmedabad, Shahibag, dated the 16th July 1912

Forwarded.

(Signed) R. P. BARROW,
Commissioner, N. D.

No. 28.

Thana, dated the 27th July 1912.

From—J. D. Dikshit, Esq., District Judge, Thana;

To—The Hon'ble Mr. S. R. Arthur, on special duty.

With reference to your No. 54 of the 4th instant, I have the honour to forward herewith the opinions, in original, of the officers noted in the margin. All these officers are unanimous in condemning the proposed legislation.

Mr. G. K. Kale, Assistant Judge.
Mr. S. R. Koppikar, First Class Sub-Judge.
Mr. V. V. Kalyanpurkar, First Class Inspecting Sub-Judge, Thana, etc.
Mr. K. K. Sunawala, Second Class Sub-Judge.

2. In my opinion no good purpose would be served by undertaking a legislation of so drastic a nature and encroaching upon the ordinary liberties of the parties. Instead of assisting the ends of justice the proposed legislature is likely to hamper its course. I cannot agree with the Commission's view as regards the methods of the Courts in determining the amounts due. They are guided by the law of evidence, the principles of jurisprudence, the power of appreciation of evidence, and the commonsense and the experience of each presiding Judge of the Court. If it is true of the cases under Dekkhan Agriculturists' Relief Act that the method of deciding the cases puts a premium on dishonesty, then it is equally true of all the cases that come to Courts. That would, in my opinion, be rather a very bold assertion. As long as the Courts exist and parties litigate, it is inevitable that both false and true evidence would be produced by the parties, and it would be always the Court's duty to find out the truth and reject the falsehood. Any attempt to reduce the work or the responsibility of the Courts by artificial restriction will undoubtedly result in failure of justice. The existing law of evidence is quite enough for the purpose.

3. The second effect that is expected to result out of the proposed system is the security of the position of the honest money-lender so far as the taking of the history is concerned. As to this I can only say that the position of an honest money-lender is always secure under the existing law. The third benefit that is expected is the exclusion of a mass of false evidence. The result, however, would be the exclusion of good deal of true evidence. It does not seem to be the policy of the Act to reduce the work of the Courts. It, on the other hand, aims at thorough enquiry into the history of each case and gives special facilities to agriculturists to fight their cases.

4. The proposed system aims to substitute one kind of documentary evidence for the other. In almost every case there is a bond or some other kind of document as the basis of a claim. The only fact that is disputed is as regards the real consideration. Even if a document is passed in consideration of an old debt, the creditors are in the habit of making it as for consideration paid in cash. This practice has not come into vogue owing to the Dekkhan Agriculturists' Relief Act but it existed even before its birth, though it may have considerably grown since the Act came into force. The duplicate account-books will be drawn up in the same way in which the bonds and other documents are prepared, a separate secret set of accounts being kept by the creditor to enable him to understand the real transaction. The Commission has already realised the difficulties that are likely to arise in consequence of the proposed change.

5. I am of opinion that no change should be made. Under the existing law the debtor is relieved of the necessity of proving failure of consideration although admitted in the bonds. The parties are to adduce evidence; and if they do not, the Court has to satisfy itself as regards the consideration from the materials on record (9 Bom. 520). Really speaking this rule of law ought to drive the creditors to the necessity of keeping faithful account-books, which is always treated as presumptive evidence; and as a matter of fact honest creditors do keep regular accounts which always aid the Courts in finding out the truth. If dishonest creditors do not keep account-books, they must take the consequences of their own acts.

6. The system of registration and licensing of creditors will not, in my opinion, work in practice. No licensed creditor would bind himself to lend money to every needy agriculturist.

Thana, dated the 15th July 1912.

From—G. K. Kale, Esq., Assistant Judge, Thana;

To—The District Judge, Thana.

With reference to your endorsement No. 1789, dated 6th July 1912, forwarding, for opinion, a copy of the letter No. 54, dated 4th July 1912, from the Hon'ble Mr. S. R. Arthur, on special duty, I have the honour to state that the system of account-keeping suggested in paragraph 5 of that letter appears open to several objections:—

(*a*) The proposal makes the keeping of duplicate accounts obligatory on every money-lender, in respect of his dealings with an agriculturist-debtor. In the first place, this means that the money-lender has to decide the question of the debtor's status as an agriculturist—a question which is sometimes extremely difficult, and which often taxes the ingenuity of even the highest Courts of law. Secondly, the proposal may be all right so far as literate and big money-lenders residing in towns are concerned. But money-lending business is often carried on by persons living in villages who are quite illiterate and who would find it almost impossible to keep duplicate accounts. It is certainly not the aim of the proposed system to put a stop to such transaction. The proposal that no plaint should be entertained by a Court without an entry from the account attached to it appears to be of a sweeping character and would prove disastrous in several cases.

(*b*) The law does not prohibit lending of money to an agriculturist-debtor simply on an oral agreement without obtaining a document from him. The proposed system, however, would require the debtor's signature or thumb-impression on the duplicate account-book in such cases. Thus, in effect the provisions of the ordinary law would be over-ridden.

(*c*) The proposal states that no evidence in variation of the entries in the duplicate account should be admissible, and that no evidence of payment in cash or kind by client to money-lender should be admitted after the expiry of 30 days from the alleged payment. I venture to think that this provision is opposed to the policy of the Dekkhan Agriculturists' Relief Act to afford full facilities to the debtor to place his defence before the Court, as provided by sections 10A, 71 and other sections of the Act.

(*d*) The argument that the system now in vogue puts a premium on dishonesty, and that the protection of the people who will not protect themselves is impossible, has no doubt considerable force, but it must be remembered that the legislature has shown special consideration in the case of contracts, even between non-agriculturist parties (*vide* section 16 of the Contract Act). It appears that the suggested proposal would place the agriculturist-debtor in a worse position than the non-agriculturist-debtor in some respect.

2. It is stated in the letter under reference that the average agriculturist in the present generation is not under the thumb of the *savkar* as in the previous generation. If it was really so, it is difficult to understand why the provisions of Chapter IX of the Dekkhan Agriculturists' Relief Act have remained a dead-letter all

along. It may be that agriculturist-debtors in some cases vie with the creditors in swearing hard lies in Courts. Perhaps they are driven to that course on account of the exigencies of the situation. But I think the average agriculturist has not yet been able to hold his own as against the creditor, who generally is the master of the situation.

3. The fact that oral evidence seldom obtains credence in Courts would hardly justify a wholesale exclusion of that evidence. The application of section 10-A, Dekkhan Agriculturists' Relief Act, throughout the Presidency shows that oral evidence is to be allowed due weight.

4. I am, therefore, humbly of opinion that the suggested proposal is calculated to cause hardship both to the creditor and debtor and that the provisions of law at present in force are sufficiently elastic and should be left unaltered.

5. As regards the proposal about the registration and license of money-lenders, I think that it is a very wide subject and involves the important question as to how far the State should interfere with the money-lending trade. I feel myself unable to express any opinion on that question.

Thana, dated the 8th July 1912.

From—The First Class Subordinate Judge, Thana;

To—The District Judge, Thana.

Referring to your memorandum No. 1789 of 6th instant, I have the honour to report that in my opinion the proposal made in paragraph 5 of the Hon'ble Mr. Arthur's letter is not feasible without violating the fundamental policy of the Dekkhan Agriculturists' Relief Act.

2. Under sections 65 and 66 of that Act, an agriculturist is entitled to an annual settlement of account or a pass-book, either of which is intended to be a complete evidence of the debt as well as of any repayment. At present the debtor does not take advantage of these provisions, because he is too trustful or too ignorant. The creditor who has his bond and accounts to rely upon does not find it worthwhile to do so, because the admissions made by the debtor in the statement of account or pass-book are liable to be disregarded under sections 12 and 13 of the Act, when the dispute actually comes before the Court. The attested accounts now proposed will practically be the same as the annual statements, only with a different name. If they are made optional, they will be a dead letter quite as much as Chapter IX is now admitted to be, and for exactly the same reasons. As presumptive evidence, they are already admissible, and no legislative action is required to make them so.

3. The question is, whether the proposed duplicate accounts may be made conclusive as to the amounts entered therein. The change will no doubt be welcomed by the creditor who could then, by merely producing an attested account, put it beyond the power of the Court to enter into the past history of a transaction. The debtor, however, will suffer materially, as he will be deprived of the power, which he now possesses, of leading evidence as to any fact in variation of a recital in a document, or of proving a payment made in cash, kind or labour, though not reduced to writing. The creditor, who finds it easy to have a recital in his bond that the debt was paid in cash, though it was really a past balance, will find no difficulty in securing a similar admission in an attested account. There is no ground for clothing a duplicate account with a higher authority as evidence than a bond or a note of hand, when admissions from the debtor can be obtained in all these with equal facility. When taking an account under section 13, the Court now disregards these admissions and finds out, as best it can, what part of the consideration was paid in cash and what part was a former balance. If the present proposal is accepted, the Court will be deprived of this power and the debtor of a material advantage.

4. The proposed change will involve the practical abolition of sections 12 and 13 of the Act and of the power they give to set aside the admissions made by an agriculturist in the writings passed by him in regard to his debt. The class of people for whom the Act exists are not the "honest money-lenders" and cultivators who possess some measure of intelligence "who may be left to their

own devices to obtain absolute proof of their transactions." It may be impossible to protect people who will not protect themselves, but that is the sole aim of such a special legislation as the Dekkhan Agriculturists' Relief Act, and its sole justification. If this object is once regarded as not worth striving for, it will be simpler to do away with the entire Act, and leave the agriculturist to such relief as he might be entitled to under sections 16 and 19A of the Contract Act.

5. If the proposed system has succeeded at Sholapur, it cannot be because there is greater virtue in an attested account than in a pass-book, annual statement, or a bond. If a dispute actually comes before the Court, it will be necessary to deal with the attested account just as with any other class of documents, and to admit evidence to prove that a recital in such account is not true. Mr. Warad may have conducted his system without dispute for 25 years, but the same result cannot be expected in the case of a money-lender who does not enjoy his reputation for philanthrophy and fair dealing.

Thana, dated the 10th July 1912.

From—V. V. Kalyanpurkar, Esq., Inspecting Sub-Judge, Thana, etc.;

To—The District Judge, Thana.

With reference to your No. 1789, dated the 6th instant, calling for my opinion on the scheme proposed by the President of the Dekkhan Agriculturists' Relief Act Commission on the subject of Chapter IX of the Act, I have the honour to state as follows.

The scheme proposed by the President of the Dekkhan Agriculturists' Relief Act Commission as regards the duplicate accounts appears to be no more than a re-enactment of Chapter IX with some additional provisions which seem to be very drastic and quite incompatible with the spirit of the whole Act. The chief characteristic of the additional provisions is, as it is proposed, that the accounts should be treated as conclusive evidence of the entries contained therein. Such a provision would undoubtedly mean total abolition of sections 12 and 13 of the Dekkhan Agriculturists' Relief Act which are admitted on all hands to be the main basis of the Act. It may be that the present provisions of Chapter IX have not been availed of as they ought to have been; but that is only the fault of the ignorant agriculturist. But by forcing upon him a scheme of accounts which would preclude him from disputing the entries therein, the position of the ignorant and helpless agriculturist would be rendered worse. Even in the case of a registered bond where the Sub-Registrar makes an endorsement to the effect that the executant admitted before him the receipt of the consideration of the bond and where the bond recites that the amount of consideration has been paid in cash, it is open to an agriculturist-executant, under the present Act, to dispute the truth of the recital in the bond and contend that the amount of the consideration was made up of past balance. And sections 12 and 13 of the Act go the length of practically shifting the burden of proof and relieving the agriculturist-debtor against the ordinary presumptions of law. In this state of things, any scheme of accounts by which an agriculturist-debtor would be debarred from disputing the entries would take away from the agriculturist the very benefit which it is the chief object of the Act to confer upon him. In this view the scheme proposed seems to be objectionable.

The proposal under consideration appears to have proceeded from an impression that under the present law a premium is set upon dishonesty and false evidence. I think, however, that such an impression is erroneous. Indeed, there is at present some temptation and scope for making a dishonest defence and resorting to false evidence in attempting to prove it. But so long as the Courts do not accept a dishonest defence as honest or false evidence as true, it cannot be said that a premium is set on dishonesty or false evidence. So far as my own experience goes, cases in which Courts cannot be "satisfied" as to the amount due under the provisions of sections 12 and 13 and have to fall back upon mere guesswork are not of so frequent an occurrence as to cause an alarm. The work of the Courts may increase whenever they have to hear a deal of false evidence. But this would be inevitable if the interests of poor and helpless and honest agriculturists are not to be set aside. Nor would it be fair to disregard the interests of

honest and illiterate agriculturists because there are dishonest agriculturists who might abuse the privilege. It is for the Act to confer a benefit on the deserving honest. It is for the Court to distinguish between honest and deserving and dishonest and undeserving.

In short, whether you make the accounts proposed to be introduced conclusive or presumptive evidence, it makes very little difference. The scheme will in either case take away from poor, helpless and honest agriculturist what you have given him by sections 12 and 13 or for the matter of that by the whole Act.

Dahanu, dated the 8th July 1912.

From—K. K. Sunavala, Esq., Sub-Judge, Dahánu;

To—The District Judge, Thána.

In reply to your endorsement No. 1789 of 1912 below Mr. Arthur's letter dated 4th July, I have the honour to state that I am unable to agree to the system of keeping accounts proposed by Mr. Arthur.

The Dekkhan Agriculturists' Relief Act is intended to deal with a class of persons who are grossly ignorant and illiterate. The Dekkhan Act is an exceptional kind of legislature which imposes certain restrictions on the freedom of action of the people and interposes itself between contracts entered into between parties. It will hardly, I think, find any parallel in civilised countries and is justifiable in India *solely* on the ground that here we have to deal with a class of debtors who are so grossly ignorant and illiterate that they are entirely in the hands and at the mercy of the money-lenders, and unless Government did something to protect them, they would shortly be reduced to penury and all their lands would fall into the hands of the savkars. I venture to make these preliminary remarks because Mr. Arthur's proposal presupposes and admittedly involves some kind and amount of intelligence as well as literacy on the part of the agriculturists. It is true that of recent years there has been some amelioration in the intellectual capacity of the agricultural debtors; as time goes on and as education spreads and as the old generation is replaced by the younger men who know the three Rs., more and more of real freedom and independence will be introduced in the relations of the savkars and the debtors. We all hope that the time will come when the need for such a special legislation as the Dekkhan Relief Act will no longer remain. But that time is distant yet, though I believe that it can be accelerated by measures intended to spread education among the masses much more freely than at present. My humble opinion is that the question of improving the educational status of the agriculturists is so intimately connected with the policy justifying the Dekkhan Agriculturists' Relief Act that it deserves more attention in this connection than I think it generally receives. But so far as the present is concerned, I cannot agree that any considerable portion of the indebted agriculturists can at present be said to be so sufficiently literate or intelligent as to understand or insist on the safeguards proposed in Mr. Arthur's letter. One debtor here or there may be a "very smart person indeed and as ready to overreach the money-lender as the latter to overreach him." But such a person is in my humble opinion a very rare exception among the agriculturists. He may be a common factor in the class of persons who can claim to be agriculturists under the present liberal definition of the word "agriculturist" but not among the genuine agriculturists, and we are much more concerned with the latter than the former.

Now the first objection to the proposal is that it is quite impracticable in the case of illiterate lenders. Money is not always lent by the professional money-lender, but by several other persons. A large class of debts is evidenced by promissory notes passed for the money-value of arrears of rent due by agricultural tenants. How can you reasonably ask or compel the owners of land to keep two sets of account books, and if they happen to be women or illiterate, how is the thing possible? Secondly, it is not so unobjectionable from the savkar's point of view as Mr. Arthur supposes. If I lend money to an agriculturist and keep two books and give one to the debtor as proposed, and if I have to sue him, the easiest way for him to defeat my claim under the new rule proposed would be to deny that the book was given to him at all. The Courts would constantly have to decide whether the book was supplied to the debtor or not. And that would be an

uncertain decision again. Another serious objection is that the creditor could easily persuade the debtor to affix his thumb-impression over a larger amount than he actually advanced. An ignorant or illiterate debtor does not know the amount that is written : he is at the mercy of the bond-writer, who is generally a creature of the money-lender. And once his thumb-impression was taken, the rule proposed would absolutely debar defendant from showing that he took an amount smaller than he acknowledged. This would put a direct premium on dishonesty of professional money-lenders and would make the debtor's position much more harder than at present. The strongest objection, however, to the proposed scheme is that it would debar defendant from proving a payment not acknowledged in writing by the savkar in the duplicate book of the debtor. This is, in my humble and respectable opinion, relief legislation gone topsy turvy. The savkars would be all too glad to have such legislation. It is asked whether it is any good trying to protect the fool from the results of his folly ? and also whether it is worth while for Courts to work " for the sake of the small proportion especially when in the long run the protection of people who will not protect themselves is impossible ?" I am afraid this attitude involves a pessimistic and, if I may venture to say so, an unsympathetic view of the whole matter. The whole Dekkhan Agriculturists' Relief Act is meant by a benign Government in the interest of these very " fools " and stupid persons who are unable to protect themselves. You may not agree with the whole policy of the Act and say it should be altogether abrogated. But if you are in favour of the Act, the proposed change is rather incomprehensible. If you exclude from your legislation the persons referred to in the phrases quoted above, a class will be left who do not need any special legislation because by the assumption they are clever enough to see that the savkar keeps a regular and true account-book in which he enters the correct amounts, and insist that he supplied him also with an equally well written account-book and so on. The Dekkhan Agriculturists' Relief Act is not primarily meant for that class at all. Rao Bahadur Warad was an honest money-lender and naturally the scheme worked well with him. But an honest money-lender needs no special scheme at all. It is against dishonest and usurious money-lenders that we are proposing to legislate. I am humbly of opinion that the remedy suggested might prove worse than the disease.

No. 29.

Alibag, dated the 25th July 1912.

From—G. A. Thomas, Esq., B.A., I.C.S., Collector of Kolába ;

To—The Hon'ble Mr. S. R. Arthur, I.C.S., on special duty.

In reply to your letter No. 54, dated 29th June—4th July 1912, in which you ask for my opinion on your proposed system of duplicate accounts to replace the provisions of Chapter IX of the Dekkhan Agriculturists' Relief Act, I have the honour to state that the several officers whom I have consulted on the subject are fairly unanimous in thinking that it may be given a trial, but the more experienced of them express grave doubts as to its practicability.

2. With this latter opinion I must confess that I find myself in agreement. I venture to think that any scheme for the protection of those that will not protect themselves is beyond the range of practical legislation. The fact that the existing provisions of Chapter IX have remained a dead letter in spite of the stress laid upon them by Government, seems to point to a conclusion that the agriculturist, bent on borrowing, is careless of securing himself against the dishonest rapacity of his creditor so long as he obtains his loan ; and it is a question whether a substitution of compulsory safeguards against a creditor's dishonesty will be more effectual than optional ones. Nevertheless the present system having been tried in certain districts and found wanting, there can be no harm in trying a new system, and I am therefore in favour of your present proposals, subject to certain modifications, being given an extended trial *faute de mieux*.

3. What appears to me to be the preliminary difficulty in the introduction of your proposals is that of finding a definition of the word " money-lender". Is it intended to cover amateur and occasional lenders of money as well as professional

savkars? It is a not uncommon experience to find persons, who eke out a precarious income from other sources, endeavouring to turn an honest or dishonest penny by an occasional loan. To bring such persons within the scope of the proposed system would be a distinct hardship both to themselves and to those who prefer resorting to them than to professional savkars, but it is difficult to see how any differentiation could be made between various classes of money-lenders without destroying the value of the system.

4. The fact that a similar system has worked satisfactorily in the case of the late Rao Bahadur Warud of Sholapur is no guarantee that it will produce equally satisfactory results if introduced universally. I do not share the optimism expressed by his trustees in the last paragraph of the extract from their evidence. It is not so much the large money-lender with a trained and businesslike staff of karkuns against whom it is necessary to devise safeguards as the innumerable small lenders of money, who more often than not keep no establishment at all. To require them to adopt an elaborate system of book-keeping will be to involve them in an additional expense, which is likely to result in increased rates of interest.

5. I fully agree with you as to the obvious and immediate advantages resulting from your scheme enumerated in paragraph 6 of your letter, as also to the benefits that will accrue to the honest creditor. The whole crux of the question however appears to lie not in its effects upon the honest but upon the dishonest creditor. In the case of the former no enforced system of duplicate book-keeping seems necessary; in the case of the latter it is doubtful whether any such system will be effective. The present system may put a premium on dishonesty, but the proposed system might add a stimulus to dishonesty.

6. Admitting that the average agriculturist is less in the hands of the savkar than in a previous generation, which probably is true to a considerably greater extent in some districts than in others, and admitting that a slim debtor occasionally over-reaches his creditor, there can be no doubt that the main object of any system must be the protection of the ignorant and careless debtor. Were the contest between creditor and debtor waged on equal terms, it is probable that no legislation at all would be necessary.

7. The objections likely to be raised against your proposals have been given and met in paragraph 8 of your letter. The first objection in my humble opinion is the stronger and the less answerable. I fear, and the officers whom I have consulted nearly all express the same fear, that the agriculturist, who is in want of money, will not refrain from attaching his thumb-impression to entries of a larger amount than he actually receives in order to obtain his loan, and I must confess that I see no possible means of preventing this. Unless, therefore, oral evidence is admitted in variation of the written entry, I do not see how the debtor is to be advantaged by the system you propose. If the evidence of the written entry is conclusive, the dishonest creditor will certainly turn it to his own advantage, and the last state of the unfortunate debtor will be worse than the first. I agree with you that in the long run the protection of people who will not protect themselves is impossible, to which might be added that no system of safeguard can be devised by the ingenuity of man that the ingenuity of man cannot evade. But if I am right in taking the view that one of the primary objects of the whole Act is to save the fool from the result of his folly, I venture to think that in the fool's interest it would be contrary to the aim of the Act to make his own signature conclusive evidence against him.

8. The second objection seems to me to be less vital. I am of opinion that when experience proves to the debtor that he will lose repayments that remain unentered, he will make it his business to see that they are entered. Whereas at the time of borrowing he may not object to an excess amount being entered in order to obtain his money, he will have no such inducement to forego all entry at the time of making repayment. It may seem to him that it is to his interest to acquiesce in excess entry in the former case, but he will not fail to realise that it is unquestionably to his interest to get an entry made in the latter case. I would however suggest for your consideration whether it would not be better at first at all events to extend the time-limit for evidence of repayment to three months instead of 30 days from the alleged repayment and even to admit it at a subsequent date *on good cause being shewn.*

9. With reference to the two points raised in paragraph 10 of your letter, I am of opinion that the accounts must be regarded as presumptive evidence only. It is true that this will militate to a certain extent against the reduction of the Court's work and number of cases, which are two of the chief advantages of the proposal, but so long as the present deplorable state of probity in money matters continues, I am of the opinion that to exclude oral evidence entirely would be to arm the dishonest creditor with an additional weapon against the defenceless debtor. I therefore hold the opinion that the attested entry should only be taken as presumptive evidence by the Court.

10. The second point raised in your paragraph 10 is whether the system should be made obligatory on illiterate as well as literate money-lenders. I venture to think that although to draw a distinction between different classes of money-lenders will be fraught with difficulty and will complicate the working of the system, it would be unfair to the illiterate money-lender whose name is legion, to insist upon his maintaining the same elaborate accounts as his literate brother. The probable result would be either that the money-lender would be victimised by the clerks he employs or else that he would be crowded out of existence, which latter alternative perhaps is a consummation not to be viewed with regret. What seems to be an objection however to such a differentiation between literate and illiterate money-lenders is that if illiterate creditors are not required to conform to the double accounts system, it seems scarcely fair to insist upon the illiterate debtor conforming to it, as it is the latter that is likely to be the chief victim of incorrect entries, whether their evidence be taken as conclusive or merely presumptive. But I do not see how this can be helped.

11. If the system is introduced, I am in favour of the books being paged, sealed and issued from a Government office, but would deprecate the throwing of this work upon the heavily burdened establishment of the Mamlatdar.

12. There is a strong consensus of opinion against the suggestion of registering and licensing money-lenders. I am personally opposed to it, as being too great a restriction upon the liberty of the subject, unless Government are prepared to go further and bring the whole system of lending money to agriculturists under the direct control of a special Department.

13. I am also opposed to any check of accounts by revenue officers. I doubt very much whether such a check would have any beneficial result. More often than not the savkar does not live in the same village as his client. It would therefore be necessary to make special provision for compelling his attendance before the checking officer, which would cause irritation, while the Assistant Collector and Mamlatdar have already more than sufficient to occupy their full attention at each village they inspect. Nor do I see what value such check would have, unless the inspecting officer were to investigate every case in which he found any discrepancy between the two sets of account-books—an investigation which could not be carried out on the spot and would virtually convert the officer into a Civil Court.

No. 30.

Godhra, dated the 8th August 1912.

From—J. Ghosal, Esq., I.C.S., Collector of Panch Mahâls;

To—The Hon'ble Mr. S. R. Arthur, I.C.S., on special duty.

With reference to your No. 54, dated the 29th June—4th July 1912, I have the honour to submit the following remarks on the proposal contained in your letter as follows.

2. The fact that in spite of reasonable efforts on that behalf on the part of Government and their officers, Chapter IX remains almost a dead letter in the four districts to which it has been applied would suggest either (1) that the provisions of the said chapter materially interfere with the free course of dealings between the agriculturists and their savkars or (2) that the agriculturists as a class have not learnt to realize what is beneficial or prejudicial to them.

3. To remedy the evils pointed out some suggestions have been made and opinions invited as to certain details by the Commission. They are as follows :—

I. Every money-lender should keep a separate account in duplicate; one copy to remain with the creditor and the other with the debtor.

II. All the transactions between the two parties are to be entered in the accounts when they take place in both copies and attested by the signature or thumb-impression, if illiterate, of both the parties.

III. No evidence of payment in kind or cash by client to money-lender should be admitted after the expiry of 30 days from the alleged payment.

IV. If the system is introduced, should it be made obligatory on money-lenders, literate or illiterate, or only those who are literate ?

V. If the system is introduced, should the accounts be kept in books paged and sealed and issued from a Government office or whether the attestation of entries would be sufficient without further safeguards ?

VI. Should a system of licensing and registering money-lenders and allowing only those so registered to lend money legally to agriculturists be introduced ?

VII. Should these accounts be considered conclusive evidence or strong presumptive evidence of the transactions recorded ?

VIII. Should the inspection of a certain number of accounts by the Assistant Collector or the Mamlatdar be insisted upon ?

I now give my views on all these points *seriatim*—

I. I think the account should be kept in duplicate and a penalty to be paid by the creditor should be provided for non-compliance. But a suit should not be thrown out on the ground that a duplicate copy of the account has not been kept. In proposing this rule I have in view the fact that it is extremely doubtful whether the lower classes of agriculturists whose interests are sought to be guarded will ever take the trouble to keep the account-book with them. As a rule, they have implicit faith in the savkars and so for the most part the duplicate copy too will remain with the savkar. Besides it will be easy for the savkars to influence the debtor when it comes to the pinch to go and say that the duplicate copy of the account was given to him but was mislaid. But if we provide a penalty, the creditor will have to be extra vigilant. The chief use of the duplicate copy will be for the debtor to show it to some one else and ascertain whether his payments have been regularly recorded. We have the analogous case of the old ryots' receipt book. This was meant to serve as a check, but we all know that in nine cases out of ten the talati or karkun kept the book with him. Only the literate and advanced classes kept these books up to date.

II. I agree. As a general rule in Gujarát the petty savkars keep a book of account called "Thamkhata". In this book separate pages are assigned to each constituent. Therefore mere attestation below each transaction will not be any extra trouble. To my mind this is a sufficient precaution against fraud till we have better experience of the working of the system. No sane man (debtor) will attest any false entry. If he is fool enough to do so, no amount of precaution will help him.

III. I am strongly against fixing any time-limit to the entries. Somehow or other the savkars would always succeed in delaying entries and then the burden of proof will be shifted to the debtor. It is futile to expect the class of persons, to ameliorate whose condition Government have to strive so much, to take legal steps to have payments recorded in the creditor's book within a fixed period. When the accounts are being examined by a Civil Court, he should be allowed free scope to give evidence of a particular unrecorded payment.

IV. Any system that is introduced should be applied to all the savkars. No distinction should be made between any class or classes. A savkar who does any money-lending has to keep accounts. It is immaterial whether he writes the accounts himself or gets them written by a clerk.

V. I am in favour of having uniformity in this respect, but consider that the use of books paged and sealed by any local office will not serve the

purpose. Apart from the fact that it will throw extra burden on the several offices to which the work is entrusted, it will open up a way for low-paid subordinates to corruption. I think books, machine-bound and paged, should be used for these accounts. They could be printed at the press and the cost recovered from the purchasers.

VI. I am not in favour of licensing and registering money-lenders. At present many agriculturists advance small amounts at reasonable interest. They will all withdraw if this condition is enforced.

VII. The accounts should be considered *only* a presumptive proof and the party who assails them should have a right to prove his allegations.

VIII. The revenue officers have a good deal of inspection to do in a village and any addition to it will be only formal. Even if it is prescribed, the inspection will be of no practical value as the savkar and his debtors do not reside in the same village. A savkar has transactions in many villages and so checking is almost impossible.

4. The principal aim of the remedies suggested by the Commission is to encourage honest and fair dealings. But at the same time we have to remember that in aiming at this result we should not lose sight of the fact that there should be sufficient money in circulation to meet the demands of the agriculturists. At present in some quarters money is being withdrawn from money-lending and diverted to other concerns such as mill-industry, etc.; if we make the rules very hard, it is just probable that savkars will refuse to advance money on personal security as they now do. The result will be that either all the belongings of the ryots will in course of time pass into the hands of savkars or that the latter will wind up their business. Besides, as stated above, money-lending is also done to some extent by well-to-do agriculturists and Rajputs. They are not expected to know all the legal technicalities, and stringent rules will dissuade them from this business. We have not yet reached the stage when co-operative credit societies or agricultural banks can materially supplement the needs of the agriculturists if the savkars withdraw from the stage.

Dohad, dated the 17th July 1912.

From—N, N. Master, Esq., Subordinate Judge, Dohad;

To—The Collector, Panch Mahals.

I beg to acknowledge the receipt of your memorandum No. R.-1722, dated 9th July 1912, forwarding copy of letter No. 54, dated $\frac{29\text{th June}}{4\text{th July}}$ 1912, from the Hon'ble Mr. S. R. Arthur, on special duty, in connection with the working of the Dekkhan Agriculturists' Relief Act.

My reply to the points mentioned in the said letter is as follows.

I quite agree with the Commissioner that the provisions of Chapter IX of the Act (sections 64, 65 and 66) are practically a dead letter in the districts in which that chapter is in force, and the reasons for the failure given in paragraph 3 of the letter are quite correct. For these reasons the chapter may now be expunged from the Act and another chapter containing provisions similar to the suggestions made in paragraphs 5, 13, 14 and 15 of the said letter may be substituted instead with modifications as shown below.

Money-lenders should be registered and licenses issued to them (paragraph 14 of the letter) by Government. After registration and issue of licenses, their names to be reported to Civil Courts, conciliators, and village munsifs, Mamlatdars, Circle Inspectors and talatis and, if necessary, to revenue and police patels.

After registration and issue of license to him, the savkar may commence or continue his dealings with his agriculturist clients and may enter those dealings in a separate account book to be kept by him for each agriculturist when such dealings take place. It is not necessary that entries of such dealings should be signed by the parties or attested by any mark such as thumb-mark, plough-mark, bow-mark, etc., as such marks will not always be clear and may not be made by persons whose marks they are intended to be; within 15 days or a month after each dealing parties to appear before conciliators, village munsifs, Circle Inspectors, talatis or

revenue or police patels (to those of them who are literate) in the case of small villages and before Nazirs and Aval Karkuns in taluka and district towns and get the entries verified by these officers, who should, after making inquiries of both parties on each dealing, grant a certificate below these dealings in the savkar's book stating "Inquired of the savkar and the agriculturist and ascertained that the above dealings are correct". If any dealing is not admitted at all or admitted in part only, the certificate to be to that effect and parties to be referred to Court at once, who should file suits within a month. If suits are not filed within that time or are filed after the month, then only the dealings admitted before these officers to be taken as conclusive proofs in suits and applications before the village munsifs or conciliators. The above officers who grant certificates to be supplied by Government counterfoil receipt books in which they should enter payments, whether cash or in kind, on both sides under their own signatures, and after keeping the counterfoil in the counterfoil book with them should send the original receipts to Courts on the last day of every English month. The Court on receipt of such receipts to enter the dealings in a register of savkars to be kept by the Courts for that purpose. Taluka and district officers, such as Assistant Collectors, Deputy Collectors, Mamlatdars and Mahalkaris when they go out touring in the district and even Sub-Judges when they go out for inspection of conciliators' work to see the counterfoil books kept by the above officers and, calling the savkars and agriculturists with their account books, to see whether the payments are true and the above officers have acted properly. If on such inquiry or in a suit before the Court or application before the conciliator or village munsif any fraud or dishonesty is detected on the part of any party, criminal proceedings may be instituted either under the Penal Code or under the Dekkhan Agriculturists' Relief Act itself, for which purpose a penal clause may be inserted in the Act and in addition the license of the savkar, if he is in fault, may be revoked.

I do not agree to the proposal in paragraph 5 of the letter *in toto* for the simple reason that agriculturist-debtors will never preserve copies of accounts given to them, and in many cases thumb or other marks of entirely different persons may be obtained by savkars as I find from the tenor of the letter that nine out of ten savkars are dishonest money-lenders (*vide* paragraph 4 of the letter) and am of opinion that there must be very few honest money-lenders on extensive scale of the class of the late Rao Bahadur Warud in the whole Presidency.

The above proposal may at first sight seem difficult for adoption and hard for both the money-lenders and their clients. But if once adopted, people will be accustomed to it and it will ultimately work to the great benefit of honest savkars and agriculturists and will enable the Courts to bring down the state of dealings between parties to certainty, will facilitate entering into history of accounts and taking of such accounts under sections 12 and 13 of the Act and will greatly reduce the number of suits against agriculturist and will even reduce applications before conciliators and village munsifs.

I further agree to the proposal in paragraph 5 regarding the admission of plaints and suggest that no plaints before Court and applications before conciliators and village munsifs be admitted without the accounts being produced with such plaints and applications by the savkars. As regards evidence, no evidence should be admissible in variation of entries certified as above and in variation of receipts forwarded to the Court if the suit is brought a month after the parties are referred to Courts unless such variation is in favour of the agriculturist. If the suit is brought within the month, evidence of payments within one month may be taken and suit decided on merits.

As for paragraph 13 of the letter, if the suggestions above are adopted it is not necessary to issue books to savkars as their entries will be certified. But the receipt books to be issued to talatis, etc., may be paged and sealed. If the above suggestions are not approved, then the suggestions in paragraph 13 stand good.

Suggestions in paragraphs 14 and 15 are replied to above.

The system of accounts referred to in the P. S. to the letter does not prevail in this part of the district.

Before concluding I beg to point out that there is no suggestion in the letter of the Commissioner about documents such as promissory notes, simple money bonds and security bonds obtained on cash advances, entries whereof may not be made by savkars in their account books. In such cases I suggest that promissory

notes and simple money bonds should also be certified by the above officers. In case of security bonds, such as mortgage deeds, etc., which are compulsorily registrable, certificates of above officers are not necessary. But instructions should be issued to Sub-Registrars to ascertain and give a similar certificate on instruments brought before them for registration to which agriculturists are parties. Further, as on the last mentioned instruments suits are brought long after the dates thereof and in many cases after the death of executants, instructions may be issued to the Sub-Registrars to note down in their certificates peculiar marks on the persons of the executants. As Sub-Registrars generally do not know the parties personally, this will ensure that savkars put up right persons before the Sub-Registrars.

Savkars are also in the habit of charging kasar vatav, etc., on cash advances and putting higher rates for advances in kind. The above officers before granting the certificate to ascertain and write in the certificate how much kasar or vatav is charged and how much higher rate is put down for advances in kind and also how much lower rate is put down in entering payments made in cash or in kind by agriculturists. For this purpose rates of different kinds of products of the district may be supplied every month on printed forms (such as the present form) to these officers and to Courts also as it will facilitate the Courts in taking accounts under the Act.

In conclusion, I beg to state that should the Commissioner desire any further evidence on the suggestions made above and on points referred to in his letter, I shall be glad to tender it at any place between the 7th and 15th September next as this Court will be closed for the Gatha Gambhar and Pachusan holidays between those dates.

Godhra, dated the 18th July 1912.

From—M. M. Bhatt, Esq., Subordinate Judge, Godhra;

To—The Collector, Panch Mahals.

With reference to your No. R.-1722 of 9th instant, calling for a report on the points discussed in the Hon'ble Mr. Arthur's report, No. 54 of 4th instant, I have the honour to say as follows.

That, in spite of reasonable efforts in that behalf on the part of Government and their officers, Chapter IX remains almost a dead letter in the four districts to which it has been applied, these several years, would show either (1) that the provisions of the said chapter materially interfere with a free course of dealings between the agriculturists and their savkars, or (2) that the agriculturists, *as a class*, have not yet learnt to realise what is beneficial or prejudicial to them. Want of education is at the bottom of the whole evil, and until this want is supplied, human ingenuity may find ways and means to counteract, more or less, the effect of legislation in their behalf.

However, the proposed system of duplicate accounts for each debtor separately is worth trying. The system of giving a pass book to the debtor, in which all transactions on either side are duly entered by the savkar or his man, does obtain in many parts of Gujarat. The system of duplicate accounts, as proposed by the Hon'ble Mr. Arthur, is a decided improvement upon it and is likely to reduce litigation and save trouble to the parties and the Court concerned, in taking accounts under sections 12 and 13 of Relief Act.

I consulted some of the savkars in this connection, but they could not urge any substantial objections to the proposed system, except a vague fear of a possible fraud to illiterate debtors even under this system, and of inconvenience to creditors leading to abstention from business.

The Hon'ble Mr. Arthur has anticipated and answered all possible objections to the system, and I do not think I can add anything useful to it.

The real difficulty in working the system is that repayment in money or kind may for some time to come remain unentered in the pass-books. To meet this difficulty I may respectfully suggest that talatis and police patels may be ordered to impress on the agriculturist-debtors in their villages that all repayments not so entered will be lost to them.

Another difficulty is that, if 30 days' time be given to debtors to have their repayments duly entered in their pass-books, to whom are such debtors to go, if the creditor desires receipt of repayment and refuses to enter it in the pass-book, and under what law and by what officers are such applications to be heard and with what result ? This provision is not likely to work well.

If the system of duplicate accounts may be introduced, such accounts may be treated as conclusive evidence for reasons given by the Hon'ble Mr. Arthur in the report under reply, *though* to do so would, I humbly submit, look like going against the *object* and *spirit* of the Relief Act, and the system should be made obligatory on all money-lenders, literate or illiterate, if it must succeed. The books for such accounts need not just at present be paged, sealed and issued from a Government office. The proposed attestation of entries in such books would, I think, be a sufficient safeguard.

The proposal for issuing licenses to creditors and for authorising officers to inspect accounts of such creditors is not likely to succeed. In that case, savkars will prefer to cease to deal with agriculturists rather than submit to the trouble and annoyance of having to apply for a license and of the chance of Government officers invading their houses and hunting them for inspection of accounts, etc.

The difficulties in the way of and objections to a proposed measure are best known when such measure is actually tried for some time. The system of duplicate accounts may, therefore, be tried as a tentative measure for some time and it may be altered, modified or dropped, as experience derived by actual working may require.

The very best solution to my mind of all these difficulties would be to open Government banks for lending money to agriculturists at reasonable simple interest both on personal security as also on the security of their property. If composition of old debts of savkars be feasible, it may even be tried. Savkars may, I think, gladly accept eight annas in the rupee in ready cash, all at once, or by reasonable instalments.

Panch Mahals, dated the 15th August 1912.

From—J. Ghosal, Esq., I.C.S., Collector of Panch Mahals ;

To—The Hon'ble Mr. S. R. Arthur, I.C.S., on special duty.

In continuation of my No. R.-2002, dated 8th instant, I have the honour to forward herewith copies of opinions received by me from the Sub-Judges of Godhra and Dohad.

No. 31.

Ahmednagar, dated the 29th July 1912.

From—A. F. Maconochie, Esq., I.C.S., Collector of Ahmednagar ;

To—The Hon'ble Mr. S. R. Arthur, I.C.S., on special duty to inquire into the working of the Dekkhan Agriculturists' Relief Act, Poona.

With reference to your letter No. 54, dated 29th June—4th July 1912, I have the honour to state that I approve of the proposed system of keeping the accounts in duplicate and think that it should be made obligatory on all money-lenders, whether literate or illiterate. The duplicate accounts need not be kept on books specially issued from a Government office ; they should be kept in ordinary books and simple attestation of the entries would be sufficient. A system of compulsory registration and license would lead to much hardship and difficulty, especially in the case of those who are not professional savkars but only at times desire to invest their savings. The best thing would be, I think, to make this registration and license-taking optional with the corresponding advantage of the account books of a licensed savkar being treated as conclusive proof ; while the entries with the attestation in the account book of a non-licensed money-lender should be treated as presumptive evidence.

No. 32.

Ahmednagar, dated the 29th July 1912.

From—G. D. Madgavkar, Esq., I.C.S., District Judge, Ahmednagar;

To—The Hon'ble Mr. S. R. Arthur, I.C.S., on special duty, Poona.

With reference to your letter No. 54, dated the 29th June—4th July 1912, I have the honour to state as follows.

2. The provisions of Chapter IX of the Dekkhan Agriculturists' Relief Act have, it is true, practically remained inoperative. In the earlier years of the Act, this result was attributed to the ignorance of the agriculturist about the provisions, and it was hoped that, as they became more generally known, he would take advantage of them and insist upon being furnished with receipts, etc.; and steps were taken to give them wider publicity, but no better compliance with the provisions followed, as the successive annual reports of the Special Judge show. The causes which have made the chapter practically a dead letter are the poverty, the ignorance and the general apathy of the cultivator class to take action to safeguard its own interests or to assert its rights, while the money-lender knows that under the provisions of the Act it is not to his interest to keep accounts. Experience has shown that the chances of conviction, if criminal proceedings are instituted to punish the breaches of law, are small, as they come to the notice of the Civil Courts only in connection with some disputed plea of repayment and it is always hopeless to obtain satisfactory evidence for a conviction.

3. The proposal to make it obligatory upon all money-lenders to maintain duplicate accounts will greatly assist the successful working of the Act, if the results expected from it would follow. But, I am afraid, considerable difficulties will be experienced in working it in practice. The legislation in respect of registration, etc., has so far not been very successful. It is generally admitted that the sections 56 - 63 regarding the registration of agricultural bonds have proved insufficient to protect the interests of the ryots, in spite of the safeguards provided therein, such as payment in the presence of, and attestation by, the Registrar. And it does not seem therefore likely that the proposed system, in which these safeguards are dispensed with and the material features of which are only the writing of the accounts in the presence of the debtor and his signing them, will prove any more effective in checking fraudulent dealings.

4. I agree that, from the point of view of the money-lender, there can be no objection to the proposed system as it will give him greater security for his money. But the difficulty does not really lie in the case of the honest or respectable money-lender as is evident from the instance of the successful working of the system of duplicate accounts introduced by the late Rao Bahadur Warad and two or three other similar instances which have been reported to me, but it chiefly lies in the case of the dishonest money-lender whose number is much larger and who still holds the average ryot at his mercy. The present proposal will not prevent such creditors from making false entries in the accounts, *i. e.*, from debiting a larger sum than they give or crediting a smaller sum than they receive from the cultivator, who will attest the transaction as readily as he makes untrue admissions before the Sub-Registrar at present. It is in fact the necessitous condition of the agriculturist which determines the condition on which he gets the loan and under the pressure of necessity he will put his hand to anything that his creditor asks him to.

5. A consideration of all these circumstances, therefore, leads me to think that accounts kept in the proposed manner will not be of much use in providing a reliable history of the transactions between the creditor and the debtor-agriculturist.

6. If the proposed system is introduced, it will be more advisable, in my opinion, to treat the duplicate accounts as presumptive and not conclusive evidence, as it is certain that in many cases the accounts produced will not represent the real transactions. It will, I think, sufficiently meet the object in view if the person who keeps the accounts is placed in an advantageous position as regards the proof of his claims and the onus of proof is laid on the party who makes allegations inconsistent with the entries in the accounts.

7. The system, if introduced, should be obligatory on all money-lenders alike, whether literate or illiterate. To introduce such distinctions as these will only open a fresh field to the parties for contentions about literacy.

8. As regards the proposal contained in paragraph 13 of your letter, it will be safer, I think, to have the account books paged, sealed and issued from Government offices instead of relying upon the mere attestation of the entries in the accounts.

9. The proposal to register and license money-lenders is open to serious objections. There will be practical difficulties in its working; and it will cause hardship to the agriculturist. The money-lenders will naturally resent the system, with the result that their number, which has become smaller, will further decrease. The difficulties of the agriculturist who, on account of his impaired credit, already finds it difficult to obtain loans will further be increased by the proposed system of licensing. It is not, therefore, desirable, in my opinion, to put any restraints on the business, or to give it the character of a monopoly.

10. I approve of the proposal that the accounts should be inspected by the Assistant Collectors and Mamlatdars, if they can find the time for it.

11. Finally, I am of opinion that each of the proposals is beset with difficulties as to definition, framing and execution, and that if embodied in law, they will at the best prove ineffective or at the worst injure the class sought to be protected, *viz.*, the ryot. The need of caution is as great in economic and sociological legislation as in social. When there has been a change in the ideals of both classes, till honesty in accounts is the accepted rule and the approved social standard among money-lenders in their transactions with agriculturists as it often is at present in their transactions among themselves and until indebtedness is considered by cultivators a shame to be guarded against rather than a normal condition of comfort, when honest money-lenders and shrewd, thrifty cultivators, free from debt, become the rule and not, as now, the exception with a system of honest accounts, then, but not till then, should the legislature try to enforce the rule upon the dishonest minority of money-lenders and the apathetic minority of cultivators.

12. I regret therefore I am unable to assent to the proposals as being either feasible or expedient. As specimens of opposite opinions, I forward copies of the opinions of Mr. Kathavate, late, and of Mr. Pathak, present, First Class Subordinate Judge here, both of whom were witnesses before the Commission.

Dated the 22nd July 1912.

From—Mr. M. V. Kathavate, retired First Class Subordinate Judge;

To—G. D. Madgavkar, Esq., I.C.S., District Judge, Ahmednagar.

In compliance with your endorsement No. 1174, dated the 10th instant, forwarding for opinion a letter from the Hon'ble Mr. S. R. Arthur, on special duty, I have the honour respectfully to submit as follows:—

There can be no two opinions that if the proposed system of making it compulsory on the part of money-lenders to keep accounts in duplicates of their dealings with agriculturits and give a copy to each of his debtors, works successfully, then the effects claimed for it in paragraph 6 of the letter will surely follow. But the important questions are, whether this proposed compulsion is feasible and if feasible, whether it will work out successfully in practice.

My answers to both these questions are in the negative. My reasons briefly are these.

The letter under report admits that the provisions of the Dekkhan Agriculturists' Relief Act for the registration of agriculturists' bonds (sections 56—63) have proved insufficient to afford protection to the ryots of the Relief Act districts, notwithstanding the numerous safeguards in them, namely, the attestation of the Registrar, and two independent witnesses in addition to the attestations of the money-lender and the debtor. How can then the simple signatures or thumb impressions of the debtor and money-lender, shorn of the attestation of the Registrar and the witnesses, be expected to give the necessary protection? I fail to see what special element of

protection there is in a money-lender writing his accounts in the presence of his debtor and taking his signature thereto, an element which was not present in the registration provisions. In them, too, there was the necessity of the signature of the debtor.

The proposals seem to me to assume a greater similarity than as a matter of fact exists between the transactions of a city trader or firm, and a village banya. But if the eye is for a time kept off from the city, and concentrated upon the village and probably more than sixty per cent. of agriculturists live in villages, what do we find there? Excepting a few large villages, a banya has his solitary shop of the necessaries of life, including, besides articles of food, clothing and paper and medicines. Every kunbi has to go to it every day. And when he goes to his field, his wife, or daughter or son goes to it and purchases a pice worth of salt, a pice worth of chilli and a pice worth of sweet oil. The banya or perhaps his son who gives these things does not necessarily make all these entries in his books, if he keeps any regular accounts at all. The next day some other things are taken, very often on credit. Things go on like that for weeks, and no payment is made. And the banya then refuses to give things further on credit. The refusal goes to the ears of the fieldman. He comes to the shop and takes the banya to task for being so impolite to his wife and children, as if he were a man without property. Perhaps the banya apologises; or, in the case of a kunbi of no credit, returns the abuse with interest. Finally the matter is settled. And Rs. 2 is fixed as the amount due. And it is agreed that at the harvest time two maunds of jwari are to be given, and that in the meanwhile the banya is to make no trouble about giving things on credit. But before the harvest time, the wife of the fieldman is delivered of a child, or his daughter is to be married, or his old mother dies, and her obsequies have to be performed. And Rs. 20 worth of clothing and articles of food and some cash are urgently required. The banya will not give anything. And there is no other person in village who will. But the fieldman must any how have the things and cash; his *abru* is at stake. What will the villagers say if a man of Ramji Sinde's fame and ancestry celebrates the marriage of his first daughter without a feast at least of *lafsi* sweets, and invites only twenty people for the funeral feast of his old mother? Ramji Sinde will put his signature to a khata of Rs. 50, even if he gets only Rs. 40 worth of things and cash. And he will say in it that he took Rs. 50 in cash, and Gulabchand, the money-lender, will enter in his accounts Rs. 50 paid in cash. He probably never wrote the petty items in his book, and he certainly never took Ramji's signature to them. And when he files a suit four years later to recover Rs. 50 principal and Rs. 50 interest, and produces along with his plaint the signed khata of Ramji Sinde, of what avail will Ramji's plea be that he got only Rs. 40? and it is not clear to me how this copy of the accounts has a greater probative force than the bond, which a money-lender generally takes. The principal guarantee for truth in the case of accounts, is that they are written at the time when transactions take place, and that the balance is daily drawn up. That guarantee is entirely absent in the present case.

Opinion, it humbly appears to me, has now become firmly established that the greater the safeguards law tries to provide in the interests of people, who are in hopelessly needy circumstances, and who have not free competition of money-lenders to look up to for some protection against extortion and fraud, the lighter are the fetters bound upon them. The provisions about registration, accounts, sale deeds, conciliators' kabulayats tell the same old tale. It will be almost impossible to compel village money-lenders to keep correct accounts.

Nor does the proposal to allow only licensed money-lenders to give advances to agriculturists seem to me commendable. That will only add to the ryots' difficulties, already great, of getting money even for agricultural purposes. Persons who are not professional money-lenders, but who very often give advances to agriculturists, will be prevented from giving them. Most of them will not care to ask for a license.

The fact that the late Rao Saheb Warad of Sholapur followed a system of giving duplicate copies of accounts to agriculturists only proves that respectable firms like his may be relied upon to do honest business in towns. So can banks and corporations. But will it not be too much to expect that in small villages, where there is a monopoly of money-lending business, and the needs of agricul-

turists, though generally small, are pressing, such a system can be successfully introduced, under compulsion ?

The case of the Dekkhan ryots differs very materially from that of the agriculturists of comparatively fertile Gujarát, Khándesh, and Southern India. In them the rains are not so fitful nor the soil so bad nor agriculturists so poor. In Gujarát I believe there is not a monopoly of money-lending business in villages. Gujarátis are instinctively a frugal and saving people. And even the poor widow there is—comparatively speaking—better off than a male of her status in these parts. I am unable precisely to comprehend how the proposed provision that no evidence of payment by an agriculturist to a money-lender should be admitted after the expiry of 30 days from the alleged payment is to be worked in practice. Suppose, an agriculturist makes a payment, the money-lender does not enter it in the duplicate copy of the accounts. Is the agriculturist to go to Court and ask it for a decree for the uncertified amount ; or is he to sue for accounts generally ? For, if he does not bring some such suit, then, under the proposal, his plea, if he raises one, when the money-lender brings a suit against him, will become time-barred if more than 30 days have by that time expired, as they ordinarily will have. If the proposed system of compulsory accounts be introduced, then it will be well to have the money-lenders' books paged and sealed from a Government office, if that can be done without considerable expense and trouble, which I very much doubt.

I have no alternative proposal to make. It humbly seems to me that no additional special legislation in this direction should be attempted, and that Government should hold its soul in patience, giving, in the meanwhile, full and increasing scope to its irrigations, its primary schools, its co-operative credit societies, its proposed panchayat system, its agricultural associations and demonstrations, and calmly but confidently await the result. Legislation has been given a sufficient trial. Time has now come for large administrative reforms. And they are bound to produce beneficial results.

Ahmednagar, dated the 20th July 1912.

From—P. S. Pathak, Esq., First Class Subordinate Judge, Ahmednagar ;

To—The District Judge, Ahmednagar.

In reply to your endorsement No. 1174, dated 10th instant, forwarding to me a copy of letter No. 54 of 1912 from the Hon'ble Mr. Arthur, on special duty, I have the honour to report as follows :—

I entirely concur with Mr. Arthur in thinking that the system of duplicate receipts suggested by him should be introduced at once throughout the Presidency. In the present state of things, Judicial Officers have to depend to a considerable extent on conjectures in enquiring into the past history of transactions as between creditors and agricultural debtors, and in attempting to ascertain and find out the balances of principal and interest due from the one to the other.

I am quite aware that similar attempts in the past have failed ; but taking into consideration the fact that agriculturists have become wiser and more self-dependent, now the system suggested by the Honourable gentleman deserves to be tried.

I for one am not prepared to suggest that debtor's signature to his account should be accepted as conclusive evidence against him. But I think his signature on his account should be considered as a very strong presumptive evidence against allegations inconsistent with entries in the account.

I cannot exactly see what the Hon'ble Mr. Arthur means when he says that after one month evidence will not be taken of repayments not entered in the accounts. Perhaps he means that the agriculturist-debtors should within one month file a suit to compel the creditors to make the entry of repayments in his accounts. If he means this, the suggested period of one month will, in my opinion, be too short. I think that three months time-limit should at least be fixed.

I think the system of duplicate accounts will encourage honest and straightforward savkars and debtors both to enter into money-lending transactions.

Personally I am against the introduction of a system of registration and license of money-lenders. Such a system, if introduced, would be very difficult to work and would curtail the number of money-lenders which has already become very small.

The suggestion, excellent in itself, is both practical and practicable. It will be of immense service to both debtors and creditors. If any agriculturist refuses to take advantage of this and allows himself to be entirely deceived by his savkar by placing too much confidence in him, no law can help such a fool and he must take the consequences of his folly.

Lastly I think the accounts suggested by Mr. Arthur should be kept in books paged and sealed and issued from Government office. I think without this safeguard mere attestation of entries by the parties concerned would not be as valuable. I beg to propose these account books should be inspected by Mamlatdars and other Revenue Officers when on tour.

No. 33.

Dhulia, dated the 27th July 1912.

From—K. R. Bomanji, Esq., C.S., Collector of West Khandesh ;

To—The Hon'ble Mr. S. R. Arthur, on special duty.

With reference to your No. 54 of the 4th instant, I have the honour to state that the questions raised in it were discussed at a meeting held on the 17th instant, which was attended by the Sessions Judge, some of the Sub-Judges, Mamlatdars, local pleaders and savkars and others of this district.

2. The conclusions arrived at are summarised below :—

(*a*) We all agree to the system of accounts proposed by you in paragraph 5 of your letter quoted above, but I would suggest that the period of 30 days after which no evidence of payment made by a client to a money-lender is to be admitted, should be extended to six months ; and the parties should also be allowed to have the payments certified on proof before the Court within this period. We are very strongly of opinion that the period of 30 days is utterly inadequate.

(*b*) In our opinion, the system of duplicate accounts should be introduced first in some selected districts ; but the accounts should be regarded as presumptive evidence, as they would be a weapon in the hands of dishonest savkars who would not scruple to advance small sums and get entries of large amounts made by the needy agriculturists.

(*c*) The system should be made obligatory on those money-lenders who are literate only.

(*d*) Books paged and sealed should be issued from a Government office to any one who applies for them.

(*e*) We do not countenance the system of registration and licensing of money-lenders. An honest savkar does not need it and would probably resent it. And it will be a hall mark of respectability to those who are dishonest.

(*f*) These accounts, as stated above, should be considered as strong presumptive evidence.

(*g*) We do not favour the suggestion of inspection of a certain number of ryots' accounts with savkars by Assistant Collectors and Mamlatdars at the time of village inspection. The savkars would not, for fear of being assessed to income tax, produce their accounts readily. From our experience of examination of ryots' receipts books with Government we are of opinion that such examinations are not of much value. The system of keeping ryots' receipts books has, as you are aware, been abolished, and we see no good in asking the Assistant Collectors and Mamlatdars to check the ryots' accounts with savkars.

3. I would here draw attention to another matter which, though it does not arise out of your letter under reply, affects the ryots' interests very severely. Article 1 (*b*) of the third schedule to the new Civil Procedure Code, Act 5 of 1908, authorises the Collector to raise the amount of the decree by letting the property to be sold in perpetuity or for a term on payment of a premium. For a long time however the practice was to recover the decretal amount by leasing the property to be sold for a term of years subject to the payment of an annual rental. This procedure was in February 1910 declared illegal by the Commissioner, C. D., in his No. R.-194-B., dated 11th February 1910 (copy attached). I do not question the correctness of that ruling. But clause (*b*) as now interpreted affords no relief to the ryot judgment-debtor.

4. Your labours will, I presume, result in some legislation being undertaken. If so, I would request that opportunity might be taken to legalise the practice which was in force till 1910.

Camp Shirpur, dated the 11th February 1910.

MEMORANDUM:

From my inspection of Mamlatdars' offices I find that in executing Civil Courts' decrees transferred to them for execution, Collectors sometimes recover the amount of decrees by leasing the property to be sold for a term of years subject to the payment of an annual rental. This procedure is illegal. The section that applies in such cases is article 1 (*b*) of the third schedule to the new Civil Procedure Code (Act V of 1908); and the word "premium" in this article means a lump sum of rent paid in advance so as there and then to satisfy the whole decree; the article does not authorise the levy of annual rents. Collectors are therefore requested to see that this mistake is not made in future, and to cancel any such orders already passed in cases where the judgment-debtors are the lessees.

(Sd.) W. T. MORISON,
Commissioner, C. D.

No. 34.

Dhulia, dated the 23rd July 1912.

From—F. J. Varley, Esq., M.A., I.C.S., District Judge, Khándesh;

To—The Hon'ble Mr. S. R. Arthur, I.C.S., Commissioner, Dekkhan Agriculturists' Relief Act, Poona.

With reference to your No. 54, dated the 4th July 1912, I have the honour to report as follows:—

1. I have already stated my views upon the scope of the Act, that I am not in favour of "going behind the bond" or "taking accounts", but if Government insists upon retaining these provisions (mischievous in my opinion), then I can say that the scheme proposed in your letter under reply is the only reasonable solution of the admittedly difficult situation which has arisen owing to the present working of the Act.

2. Most of the Sub-Judges are in favour of the proposed system, though a few condemn it upon precisely the points anticipated in your letter. The most serious criticism I have to notice is that the scheme will not work.

It has also been suggested that it will be welcomed by the *dishonest* creditor. The latter suggestion is based on the understanding that the accounts are to be made conclusive evidence.

3. As to whether the scheme is a practicable one. The analogy of certain proposals made by a Judge of the Small Cause Court in Bombay has been instanced, and a comparison has been made with that egregious revenue failure, the ryots' receipt book. But the failure of the latter, I can safely say from my revenue experience, was due to the fact that the *ryot* had no personal interest in seeing the book written up: in the proposed scheme he will have, and if it be answered that still he will not bother himself, the reply to that is that he is a perfectly hopeless individual who must go to the wall in any civilised society, and no Government can legitimately be required to look after him any further.

There are several criticisms as to detail, such as the difficulty of making thumb-impressions—that some money-lenders are illiterate, but not one of them appears to be insuperable.

I was at first inclined to think that one copy (or pass-book) was sufficient, but the second copy to remain with the creditor is of great advantage to him, for it is a standing complaint that original accounts are kept long in Courts. Consequently under the proposed arrangement the ledger should only be required in Court where there is some serious dispute or discrepancy between the two pass-books. The books should be issued paged and bound from some Government office to any registered money-lender free, or at cost price.

4. Under no conceivable circumstances should the mischievous "checks" suggested in paragraph 15 be introduced. Every Sub-Judge condemns them, and it ought to be perfectly evident that no money-lender cares to have the Mamlatdar or the Assistant Collector "inspecting" his books of account. The scheme will not be a popular one in any case, and these "checks", which would be found in practice to be as useless as mischievous, will frighten away many, who might otherwise approve of the scheme.

The accounts will get inspection galore when they come into Court.

5. There is a general agreement that the accounts should be presumptive evidence only, and that a six months' limitation might be made for repayments.

6. Negative criticism there is in plenty of the scheme; it is argued that the dishonest man will remain dishonest, and the "agriculturist" debtor a fool, and that things will go on much as at present.

This is quite possible, but in my opinion the proposed scheme offers a solution of the difficulty at least worth a trial and if "accounts" must be taken, affords the most reasonable method of "taking accounts." The crying evil up to the present has been that the debtor never knows "how he stands."

Now he will have a ready means of so doing, for if he is diligent (and if he is not in money matters affecting him personally, he is hopeless) he has in the pass-book a means of ascertaining his position, even if he be hopelessly illiterate, for any independent person will interpret the book to him.

7. At the meeting I attended in Dhulia, every one seemed to be frightened of the words "*licensed* money-lender." I tried to explain what I take to be the essence of the proposal that "licensing" or "registration" is to be made as easy as possible; and, of course, without any fee. "Licensing" means merely that the lender is noted down as a man to whom the accounts have been issued under the proposed Act to deal with "agriculturists" or "special class" (if my proposal is accepted). To bring a suit in Court he must keep these accounts; he may, in his ordinary capacity, deal with other clients, but these dealings find no place in these accounts—he is merely bound to keep accounts in this particular form when he deals with a person of the "special class." If this is a correct understanding of the proposal, it might be made more clear, for many money-lenders were quite frightened at the idea of some gigantic Government scheme of an inquisitorial nature (for income tax and other purposes) for ascertaining their dealings with all and sundry.

I, however, think I clearly apprehend the proposal, but would suggest that no "license" should ever be revoked except upon conviction of some criminal offence involving fraud. The proposal at the end of paragraph 14 is much too drastic, for, from what I can gather, so far from the scheme being popular, it will be very difficult to induce enough money-lenders to come forward. I would suggest, for consideration, the deputation of several officers of experience to introduce the scheme and explain its provisions, for I am convinced that, if it were properly worked, a stream of capital would flow back into the old channels, a stream which, if not already dry, has practically ceased to flow.

I go upon the assumption that a man, be he "agriculturist" or of other classes, wants to borrow for his requirements at the lowest rate of interest. This can only be secured by attracting capital, and capital is a thing which is easily frightened away.

How successfully it has been frightened away by the working of the present Act is evidenced by the extraordinary arguments which are put forth in all seriousness, ostensibly based on evidence to that effect, that a high rate of

interest is an excellent thing as it *stops* a person from borrowing. Such an argument can be most forcibly refuted by the would-be borrower.

8. I regard the "registration" or "licensing" of money-lenders as a necessary corollary of the present proposal. It is argued, why not issue your books broadcast to any applicant? The reply to that is that to check misuse, you must have under the Act at least some record of the lenders to whom books are issued and the number of such books.

9. I will now outline the proposed provisions of the Act:—

1. Act to be called "Registered Money Lenders' Act."

1A. "Registered" = registered under provisions of this Act.

2. Provisions only applicable to transactions between lenders and "agriculturists" (special class) (as defined in Dekkhan Agriculturists' Relief Act).

3. On and after no Civil Court shall entertain a suit unless supported by accounts kept by a registered money-lender.

4. "Accounts" consist of (1) ledger issued to lender; (2) pass-book for creditor; (3) pass-book for debtor.

5. Provisions as to up-keep, etc., of these books, issue free of cost, etc.

6. (2) and (3) of rule (4) shall be presented with the plaint or written statement respectively.

(1) should not ordinarily be called for by the Court.

7. Within six months of the alleged payment a debtor may apply to the Civil Court to have any payment certified in the accounts.

8. Entries in the "accounts" shall be considered as "presumptive evidence" by the Courts.

9. A register shall be kept of all lenders to whom accounts are issued and the number of accounts issued to each.

10. Any person may apply to be registered under this Act, who has not been convicted of a criminal offence involving fraud. Any person registered may be removed from the list upon conviction of such an offence.

No. 35.

Jalgaon, dated the 31st July 1912.

From—A. H. A. Simcox, Esq., B.A., I.C.S., Collector of East Khándesh;

To—The Hon'ble Mr. S. R. Arthur, on special duty, Poona.

With reference to your No. 54 of 4th July 1912, I have the honour to forward the accompanying note regarding my views on your proposal about Chapter IX of the Dekkhan Agriculturists' Relief Act, and to add that this chapter has been made applicable to the judicial district of Khándesh, by Government Notification No. 1644 of 20th March 1911 (*Bombay Government Gazette*, Part I of 1911, page 443).

NOTE.

If sections 65 and 66 are so amended as to become operative *without* a

demand, like section 64;

(2) if the pass book referred to in section 65 is maintained in duplicate, one copy remaining with the agriculturist and the other with the savkar;

(3) if the village accountant or the revenue patil is made to attest the transactions each time they are entered in the pass-book (in duplicate);

(4) if the Civil Courts are debarred from entertaining suits without the production of an entry from the pass-books with the plaint, and of the original books at the time of hearing;

(5) if these entries in the pass-books are by themselves admitted by Courts as conclusive proof of the facts therein stated; and

(6) if no oral evidence is allowed to be given in variation of the entries in question, the object aimed at of putting a premium on honesty will be gained, the Civil Courts will be saved a lot of trouble and time in tracing the history with certainty and the number of suits will be reduced.

2. So far as regards the lines on which the law will have to be amended. But these amendments alone will not be sufficient to carry out the object aimed at. All will depend upon the strict enforcement of the law in sections 64 to 66, and that enforcement lies mainly in the hands of the agriculturists because, unless he comes forward and complains about non-compliance with the provisions of these sections on the part of the savkar, cognizance of the offences punishable under section 67 cannot be taken by a Magistrate, and it is very unlikely, that the agriculturist will come forward; because thereby he will lose his credit with his savkar who will consider him to be a troublesome fellow and will refuse having any dealings with him. Thus to speak of punishment under section 67 is of little or no avail. The only effective provision will be that of not accepting plaints without an extract from the pass-book. Savkars will be required to issue pass-books if they want to recover their debts or will stop money-lending to save all this bother unless they are unable to invest their money in some other way.

3. No doubt the rule of keeping duplicate pass-books will weigh hard upon the illiterate savkars, as they will be required to engage writers, but we cannot make a distinction between the two sorts of savkars, illiterate and literate, as thereby we lose our object of getting at the accurate "history of the debts of an agriculturist".

Paragraph 14.

4. I agree that the books should be issued from the Government press through Government officers on payment of a fixed price; of course, these will bear printed paging and will have to be sealed by the officer issuing them.

To have only licensed money-lenders.

5. I do not think this system would be welcome either to the savkar or the agriculturist, and I am afraid we can't check the business in this way.

Paragraph 15.

6. The inspection will add to the work of the already overburdened Revenue officers. Still I am for it in the interests of the agriculturist.

No. 36.

Nasik, dated the 26th July 1912.

From—C. M. Baker, Esq., B.A., I.C.S., Collector of Nasik;

To—The Hon'ble Mr. S. R. Arthur, I.C.S., on special duty.

I have the honour to reply to your No. 54, dated 5th July 1912.

2. I attach two letters on the subject from sub-divisional officers, not because I think them very valuable, but because consideration of objections is the easiest way to discuss a proposal of this kind.

3. The first is the opinion of Mr. Garrett, an experienced Assistant Collector, who holds strong views about the moral deterioration caused by the Dekkhan Agriculturists' Relief Act. Since he holds such views, it is not quite clear to me why he does not support your proposal, which in abolishing oral evidence would certainly abolish a great deal of perjury.

4. That only one savkar in twenty is dishonest may be true, but it seems to be no argument against your proposal, which will hurt no honest money-lender. It is said to be a burden on money-lending transactions, but it is surely a very small burden and well worth bearing for the sake of the finality which it gives.

5. Mr. Garrett argues that if the savkar is dishonest, the finality of the accounts makes the debtor worse off than before. Mr. Khopkar makes a somewhat similar objection. I think they miss an important point. The chief danger to the debtor is not that the accounts should be written wrong at first, but that they should be manipulated afterwards. Your proposals save him from that danger, and

also give him a better opportunity than he has now of seeing that the original entries are correctly made. If he is such a fool as to neglect that opportunity and to sign the entries without reading them or getting them read, then the proposed rule will not save him; but, as you point out, no more would the present or any other practicable rule. In my opinion it would be found that there are really not so many fools of this kind as there appear to be under the present haphazard system, which makes it pay to pretend to be a fool when one is really only a knave.

6. On the subject of Rao Bahadur Warad, both Mr. Garrett and Mr. Khopkar simply say that he was a banker, as if that settled the question. But there is no point in this unless it can be shown that his system of accounts was so elaborate that ordinary money-lenders could not imitate it. Obviously this is not so. A pass-book is the simplest form of account possible.

7. Mr. Khopkar sends in an alternative scheme in which he says he had the collaboration of the First Class Sub-Judge. What the advantages of it are I am unable to see. He says that it is free from the objections which are apparent in your scheme. But one of his objections was that the issue of printed books would be expensive; yet he now proposes to make the savkar keep not only numbered and printed books but also files and carbon paper. Having mentioned carbon paper, I think I need not discuss the practicability of this scheme any further.

8. It is said that the issue of books by Government would not only be expensive but would give an impression that Government guaranteed the correctness of the accounts. The "printing" in the books would merely be the numbers of the pages; and if a man thought this a guarantee of the truth of everything afterwards written on those pages, he would be one of the class who are past saving. I myself have always been in favour of having paged account-books issued by Government, since I have seen a good deal of forgery which could have been prevented in this way.

9. The question of licensing money-lenders is a difficult one. I do not quite know what the definition of a money-lender would be and for what dealings a license would be necessary. I prefer not to give an opinion until some more definite proposal is made.

10. Otherwise I am entirely in favour of your proposals. I think the accounts should be conclusive evidence No other rule would prevent the subsequent oral perjury which is so great a feature of the present system.

11. I also think that the law should apply to illiterate money-lenders as well. I do not think there are many such, and anyhow they ought to be made to keep accounts. It is for their own advantage, both in civil suits and in income-tax appeals. And it is quite easy in these days to get things written. In some Deccan talukas every second village has a school. Even in Sind the money-lender who cannot write is very rare, and he always has friends who can. Whether the use of an unofficial and illegible script like Hindu Sindhi should be allowed is a hard question; but as I am not in Sind now I leave it for others.

12. In conclusion, I disagree with the opinion of Mr. Garrett and Mr. Khopkar about the impossibility of accounts being checked by Government officers. Of course, Collectors are always overworked and sub-divisional and taluka officers very often are. It must not be expected that they should examine a large number of accounts. If it were known that they might possibly examine a few at any time, the desired result would be attained. Some of the time now wasted in examining excessive numbers of ryot's receipts might more profitably be spent in this way.

Camp Malegaon, dated the 16th—18th July 1912.

From—J. H. Garrett, Esq., I.C.S., Assistant Collector, Násik;

To—The Collector of Násik.

With reference to your No. 5824 of 7th July 1912, I have the honour to offer the following remarks.

2. In the first place I have come across no instance of any savkar following the practice described in paragraph 5 of Mr. Arthur's No. 51 of 4th July 1912. In the course of hearing income-tax appeals I have examined the accounts of most of the savkars in eight talukas, so that it can safely be said that the practice does not exist.

3. Mr. Arthur in paragraph 4 of his letter has very truly pointed out the demoralising effect of the present Act. I do not, however, agree with him in thinking that the proposed scheme will be any better.

4. It imposes a burden on the ordinary transactions of debtor and money-lender. It is only one case in twenty or so which even comes into Court. The ordinary savkar, though grasping, is not, as a rule, dishonest. To clients who are honest, he accords fair treatment. To the defaulter he is naturally not lenient. It seems a mistake to judge the savkar by his show in the Courts.

5. Again if the duplicate account is to be conclusive, or even presumptive, evidence of the state of an account, the whole advantage will lie with the savkar. If he is honest, no harm is done. If he is dishonest, the debtor is worse off than under the ordinary law. The Dekkhan Agriculturists' Relief Act is intended to protect the agricultural debtor. If it does not do this, it would be better repealed.

6. With regard to paragraph 13 I consider that in no case should Government books be used. This would be an additional expense to the parties and likely to mislead debtors into thinking that Government guaranteed the correctness of accounts.

7. For the registration of money-lenders there is more to be said ; but I think that legislation in this matter would be premature in rural districts.

8. If the proposed system is introduced, I consider that it is no part of the duties of a Government officer to pry into the dealings of savkar and client (paragraph 15).

9. With regard to paragraph 16, I would point out that Rao Bahadur Warad was practically a banker and his method of keeping accounts resembles that of the bank ledger and pass-book.

Nasik, dated the 22nd July 1912.

From—Rao Bahadur V. N. Khopkar, District Deputy Collector, Nasik Division;

To—The Collector of Nasik.

With reference to your No. 5824 (circulating), dated the 7th July 1912, received on the evening on the 19th instant, I have the honour to state that the proposals made by the Hon'ble Mr. S. R. Arthur were discussed by me with Mr. C. G. Kharkar, Joint Sub-Judge, Nasik. The accompanying note drawn by us both is the result of that discussion.

NOTE.

The principle underlying the suggestion made by the Commission of introducing the duplicate account system in respect of the money transactions between savkars and the agriculturists seems to be to modify sections 64 and 66 of the Dekkhan Agriculturists' Relief Act, in such a manner as to prevent the working of the system advocated to rest on the will of either the agriculturists or the savkars.

The first step taken to achieve this object is that of making it obligatory on the savkars to attach extracts of their accounts, which are to be duplicate and a copy of which has to remain with the debtor, with their plaints, and a second is to require any person intending to start the business of money-lending to, in the first instance, obtain a license for the same. These suggestions are likely to be characterised as a further encroachment on the liberties of the people, but they have been made with the benevolent intention of protecting the interest of the agriculturists, who represent a majority of the population of this Presidency, against the machinations of the savkars. Viewed from this point the suggestions are certainly deserving of every careful consideration, but the point is whether without, if possible, interfering further with the liberty of the people a system could not be suggested which would be free from the obvious objections to be raised to the present proposal and would at the same time be effective enough to check the

present malpractices of both the savkars and the agriculturists. Before suggesting what appears to me could be done in this matter, I would with your permission beg to point certain defects in the suggestions advocated by the Commission.

It has been suggested that every money-lender should keep a separate account in duplicate of his dealings with each agriculturist-client. All transactions between them should be entered, when they take place, in both copies and attested by the signatures (or the thumb-impression, if illiterate) of both parties. One of these copies should remain with the money-lender and one with the client concerned. No plaint should be entertained by Court without an extract from the account being attached to it, and the account itself must be produced at the time of hearing. No evidence could be admissible in variation of entries attested as provided above by parties. No proof of payment by money-lender to client should be admitted unless entered in the accounts and attested. No evidence of payment in cash or kind by client to money-lender should be admitted after expiry of 30 days from the alleged payment.

The first objection to the duplicate account seems to be that there is no guarantee that an illiterate agriculturist would not be deceived into believing that the money taken by him to the savkar in repayment of a portion of his debt will not be shown as an advance made to him. It is likely to occur in this way. The debtor wants seed for tilling his land and grain for the maintenance of his family till harvest time. He has some cash in his hand which is not quite sufficient for his requirements, but which he knows will be a sufficient inducement for the savkar to advance seed and grain. In duplicate accounts to be kept the savkar might manipulate the entries in a way to deceive him, the thumb-impression would be taken and the entries would be signed by the savkar. After this a duplicate copy of the account will probably be taken by the agriculturist to his literate friend and he will find from him that he has been deceived. But what remedy could there be for the wrong thus perpetrated? The account and thumb-impression will be at his beck and call to show that the agriculturist was a liar. Then again there is nothing in the suggested system to prevent the savkar from entering in account a sum much in excess of that advanced. The entry could be read and the debtor told that he has been given the money wanted by him, while his thumb-impression could conclusively prove the savkar's entry to be true.

The suggestion about licensing money-lending business among the agriculturists is likely to be misinterpreted. Attempts will be made to show that Government intend to take up the business in their own hands. I am afraid the result of this would be to create discontent. Besides, this would mean the favouring of one class at the expense of the agriculturists among whom the much-to-be-desired habit of thrift and rendering assistance to those needy has begun to take root. The money-lending business will be a monopoly of the privileged licensed savkars who would seek unscrupulously every opportunity to squeeze as much money from the agriculturist as possible. Honest men like the late Rao Bahadur Warad of Sholapur might be found here and there. But this cannot be said of the majority of those engaged in the business. There is an element of selfishness in human nature, and it is likely to be manifested when opportunities occur. Besides, Rao Bahadur Warad was a banker and kept accounts on the banking system. The same honesty of purpose is not to be met with in the average money-lender posing as a person guaranteed by Government to carry on this business. The issue of printed books would be expensive and mean an additional charge on the agriculturist-debtor. There is also a fear of the savkar's unscrupulously impressing on the debtor the fact of his accounts being authentic, as the books on which they are written have come directly from Government.

Theoretically the inspection of the savkar's accounts by superior Revenue officers may be a sound measure for checking fraud, but in practice this system will be found unworkable. Mamlatdars and the Sub-Divisional Officers are admittedly over-worked and this additional duty devolved on them will be shirked, though unwillingly, and will ultimately fall on karkuns who cannot all be said to be irreproachable.

I would suggest the following system for consideration with a recommendation that it should be introduced among the literate savkars only.

The money-lender should be required to keep two separate accounts exclusive of the separate khatas he usually keeps for the persons with whom he deals.

One of these accounts should be for disbursements made and the other for money received either in cash or kind, giving the value of the latter credited by him. These should be signed by him and the debtor, and where the latter is illiterate his thumb-impression should be taken on them. Both these should then be attested by two witnesses. The books should be bound and the pages should be perforated in the margin and numbered. Copies of these should be made by the introduction of a carbon paper between the leaves of the books and should be torn from the bound books and supplied to debtors, which would prevent their being tampered with. These copies should also be signed by the creditor and the debtor and attested by two witnesses as stated above. The creditor should also be made to give the debtors two files for pasting the copies of the accounts given to them.

The savkar failing to give copies of his accounts should be liable for prosecution on the application of the debtor within 30 days from the date of taking advance or repaying the same wholly or in part with interest, or paying only the interest. This application should first be made to the Collector who would enquire into it and sanction the prosecution if he were to find the charge to be proved *prima facie*.

I have specially excluded the illiterate savkars, as a majority of them are likely to be agriculturists dealing in small sums. To make incumbent on them to maintain the account system advocated above would mean an additional charge on the debtor-agriculturists.

No system could be perfect and the one now suggested may be shown to have defects of its own. My only apology in putting it forward is that it is free from the objections which are apparent in the system now proposed by the Hon'ble Mr. Arthur.

The duplicate accounts and their copies would supply presumptive evidence to Courts who would doubtless rely on them till they are shown to be false.

No. 37.

Násik, dated the 29th July 1912.

From—C. E. Palmer, Esq., I.C.S., District Judge, Násik;

To—The Hon'ble Mr. S. R. Arthur, on special duty.

In reply to your letter No. 54, dated the 5th instant, I have the honour to point out with reference to paragraph 2 that sections 64—67, Dekkhan Agriculturists' Relief Act, were extended to this and the Khándesh districts by Government Resolution, Judicial Department, No. 1644 dated the 20th March 1911.

2. I submit that the taking of history is not necessarily as stated in paragraph 4 a pure matter of guess-work, though a good deal of course depends on the Sub-Judge concerned. To take one case, if a savkar suing on a bond, the consideration of which is old debt, possesses accounts and declines to produce them, ordinarily the Court will justifiably draw every presumption against him and in place of cutting down the account to some extent will throw out the claim altogether. This procedure is even now fairly common I fancy, and if the suggestion in point 6 of the points referred to the Commission be carried into effect, will be general.

3. The savkar may occasionally adopt the line of argument suggested in paragraph 4 and claim higher sums than he is likely to get, but my own experience has been rather the other way of savkars claiming only the face-value of bonds passed on account of old debts in place of *dam dupat* on them and of charging a lower rate of interest than that stipulated in the bond when it happens to be excessive. The reason is obvious. They get no advantage from throwing good money after bad.

4. In the taking of history the prime necessity is to get the savkar's account, if he keeps any, before the Court. It is but rarely a savkar is an out-and-out rogue and even if he should be one, it would ordinarily not be worth his while to manufacture accounts for the express purpose of producing them in Court for one suit. The trouble would be great and so would the risk, while the advantage would be problematical. The danger of entirely false accounts being put in is therefore negligible. Accounts can however be manipulated in various ways for the purpose of giving wrong impressions even without being actually false. For instance, a

savkar taking a bond for an old debt can show the debt as satisfied by a cash payment and the bond as taken in return for a cash advance. This is a common practice, but is easy of detection. Accounts may also be intentionally false in that repayments by the debtor are omitted or if made in grain are undervalued. The former is difficult of detection, the latter, if the quantity be correctly given, is less so. In either case the Court can, as the law stands at present, use its own judgment as to the weight it is to attach to the accounts and the parties' statements with regard to them.

5. After these remarks on the taking of history as conducted at present, I turn to a consideration of the Commission's proposals in paragraph 5. The proposal that every money-lender should keep a separate account in duplicate of his dealings with each agriculturist-client is reasonable and might well be recommended for adoption to savkars generally as likely to prevent friction between them and their clients, but I am not prepared to recommend that it should be enforced by law. Some savkars, as well as most agriculturists, are illiterate, and the effect of the proposal would be to reduce the number of savkars, as would any direction to savkars to take out licenses. This might encourage thrift on the part of the agriculturists; it would also certainly tend to raise the rate of interests against him. There would be besides no guarantee that the duplicate accounts would be more reliable than the present accounts kept by the savkar. Consequently the further proposal to make the entries in the duplicate accounts conclusive evidence against both parties should, in my opinion, certainly not be enforced.

6. My remarks above show that I do not consider that the present system puts a premium on dishonesty, and even assuming that instances of dishonesty do occur under it, that is not, I submit, a good ground for abandoning all attempts to protect the agriculturist fool from the results of his folly. If that line is to be taken, not only the present system of taking history, but the Dekkhan Agriculturists' Relief Act as a whole would need to be abandoned. To make entries in the duplicate accounts conclusive evidence would be dangerous in the extreme, even if books paged and sealed and issued from a Government office were only allowed for use. I would point out incidentally that the provision of the books would be a big undertaking for Government. If the entries are only to be used as presumptive evidence, we are not much further advanced than at present. It seems to me that it is useless to expect an ordinary agriculturist, whether in urgent need of money or not, to do what is apparently expected of him if the new accounts are introduced. It is not explained to whom he should apply if the savkar declines to give him a receipt or gives him an incorrect one. This is a point of some importance, as the savkar and his client frequently belong to different villages, neither of which is the taluka head-quarters or possesses a Sub-Court. It may be noted that, as the law stands in this district, the savkar must tender written receipts to the agriculturist who is besides entitled to annual statements of accounts and a pass-book. No case has yet come under my notice either in this district or in Satara, where also these provisions are in force, of a savkar being proceeded against under section 67, Dekkhan Agriculturists' Relief Act, for failure to comply with the provisions of sections 64 to 66, Dekkhan Agriculturists' Relief Act, though this can hardly be because all savkars comply with those provisions. My conclusion is that whether the present-day agriculturist is an improvement on his forefathers or not, he cannot yet be trusted to take the action that must be taken if the proposed system of duplicate accounts is to be a success.

7. Of the six officers consulted by me only one is at all in favour of trying the proposed system. He says merely "that it is very difficult to devise any system which would be free from practical difficulties, but that is no reason why some system should not be tried." Mr. Datar, whose letter I attach, suggests that more use might be made of the money-order system if slight improvement be made in the forms and reduced rates charged for remittances. I also attach Mr. Choksi's report.

8. I beg to invite attention to Government Resolution, Judicial Department, No. 5088 of 23rd September 1903, under which a proposal for the compulsory registration of all books of account used throughout the Bombay Presidency was sent for opinion to various officers. Apparently the proposal was not favourably reported on. Many of the arguments against that proposal apply with equal force to the Commission's proposal.

Málegáon, dated the 18th July 1912.

From—M. N. Choksi, Esq., Subordinate Judge, Málegaon;

To—The District Judge, Násik.

With reference to your memorandum No. 1821, dated 9th instant, asking my opinion about certain suggestions made by the Honourable Mr. S. R. Arthur, I beg to submit the following.

The provisions of sections 64, 65, 66 and 67 of the Dekkhan Agriculturists' Relief Act have been made applicable to this district since the last year (see *Bombay Government Gazette*, Part I, page 443 dated 23rd March 1911). These provisions if enforced in the spirit in which they are passed for the protection of the agriculturists would greatly remove due objections that are now suggested.

The proposal to introduce account books in duplicate does not seem to be very practicable. There are in many places agriculturist money-lenders and they have no means to keep any such account, and such provisions would be a great hardship on them. Again the proposal to introduce such accounts and make them conclusive evidence is certainly very injurious to the agriculturist. The remark that the fool must suffer for his folly should not be applied to the agriculturist, because the whole basis, in my humble opinion, of the Dekkhan Agriculturists' Relief Act, is to protect the fool because he is a fool and unable to protect his interests.

The observations made in paragraph 4 as to the way in which the suits are now disposed of and the way in which the accounts are taken, are certainly not universally correct. The taking of history is not a guess-work, but the law requires the creditor to prove by positive evidence the amount that he advanced. The cases in which he does not satisfy the Courts of the advance made by him the only alternative for the Courts is not a middle course, but to reject the plaintiff's claim. The illustration put in paragraph 4 of a savkar saying Rs. 200 instead of Rs. 150 does not appear to represent the real state. If the creditor says that he advanced Rs. 200, the Courts will ask him to prove the payment by the same means as any other fact is ordinarily proved in Courts of justice, and if that evidence satisfied the Court there will be a decree for the amount proved ; but under the Act, there is no power given to the Courts to grant Rs. 150 when the Courts are not satisfied of the advance. It is for this reason that the sections which allowed such a middle course have been repealed. See section 15 which allowed arbitration, but the section is now repealed. As the law now stands, it is for the plaintiff to prove to the satisfaction of the Courts that a particular sum was advanced by him, and on failure of such proof the Courts have no middle course. If this be the correct view of the law, it will be necessary for the plaintiffs themselves to keep proper account books in order to prove their claim. As long as the human affairs are as they are, there will be always difficulties in one way or the other, and it will be the duty of Government to provide best judicial officers so that the work of administering justice will be in the hands of honest and impartial persons, and the same high standard of efficiency and honesty may be continued.

I would submit that the attention of the agriculturists should be called to the provisions of sections 64, 65, 66 and 67 through the Revenue officers in villages, and the agriculturists should be instructed to bring all cases to the notice of the Civil Courts in which the creditors refused to give receipts, and the Courts should be instructed to put these provisions into force, and in cases in which the creditors are proved to have failed to give receipts should be furnished. The provisions of the Act as they stand appear to me to be sufficient to protect honest creditors and debtors.

But if once the principle that fools should suffer for their folly is to be applied to the agriculturists, the Dekkhan Agriculturists' Relief Act is no longer necessary, and the result will be that as before the creditors will be oppressing the debtors, and the Courts will be merely the tools to assist in the same.

Násik, dated the 20th July 1912.

From—Ganesh Ramkrishna Datar, Esq., Additional First Class Sub-Judge at Násik;

To—The District Judge, Násik.

With reference to your office endorsement No. 1821 of 9th July 1912, forwarding a copy of letter No. 54 of 29th June—5th July 1912 of the Honourable Mr S. R. Arthur, on special duty, for expression of my views on the subject of Chapter IX of the Dekkhan Agriculturists' Relief Act and the question of receipts and accounts in reference to transaction in which one party is an agriculturist, I have the honour to state as follows.

It must be admitted that existence of duplicate accounts, as referred to in paragraph 5 of the letter of the Honourable Mr. S. R. Arthur, will lighten the work of the Courts in the matter of taking history and will make it rather more certain than a mere guess-work without affecting the position of the honest money-lenders like the late Rao Bahadur Appa Saheb Warad. I fail to see, however, how the working of this system can be secured with greater certainty than the working of the provisions of Chapter 9th of Dekkhan Agriculturists' Relief Act which have been enacted to secure virtually the same object. Experience has shown that those provisions are successfully evaded in the four districts in which they have been in force so long and the provisions have in fact remained a dead letter. The reason why the debtors fail to take advantage of these provisions is their ignorance and helplessness due to perpetual neediness. So long therefore as these primary causes exist I see no better hopes for the success of the system of duplicate accounts. For instance giving of a duplicate copy of an account to the debtor can as successfully be evaded as the giving of a receipt or a pass-book referred to in sections 64 and 66 of the Dekkhan Agriculturists' Relief Act.

The keeping of duplicate accounts as proposed in paragraph 5 of the letter of Mr. Arthur will be useful only prospectively, but shall of course have no application to old transactions completed prior to the introduction of this system. It is mainly with respect to such transactions that the help of the provisions of sections 12 and 13 of the Dekkhan Agriculturists' Relief Act is generally required. System of duplicate accounts will secure the interests of honest creditors with respect to advances made from time to time, while by it to the debtors will be secured the evidence of payments made by them. Once the Relief Act is introduced in any district, the creditors as a class will always as a rule be careful to secure evidence of proving payment of consideration to the debtors, whether the system of duplicate accounts is introduced or not. We have only to see whether the introduction of this system will advance the cause of agriculturist-debtors. But judging from my experience I am inclined to answer the question in the negative. In addition to the danger of the creditors evading the duty of making entries of payments received in the accounts, I am afraid they will often in the statements of accounts make recitals of facts prejudicial to the interest of ignorant and needy debtors and thus create evidence which it will be impossible for the debtors to rebut. To introduce the system with the understanding that the helping hand of the law need not be extended to such fools as are unable to protect themselves from their folly would in my humble opinion be running counter to the very assumption on which the system of Dekkhan Agriculturists' Relief Act is based. Again, the fact that the number of such fools amongst the agriculturist class is so small as can be neglected, must be clearly established before a measure is adopted on that hypothesis; and if that hypothesis be once accepted I would venture to say there is hardly any reason for keeping a special enactment like the Dekkhan Agriculturists' Relief Act on the statute book.

I would have at once run in favour of the duplicate accounts had I been convinced that the cultivator would not be in a worse position than at present. I am however inclined to think that it would make the position of the debtor worse, as for instance in the cases of cash considerations endorsed on registered bonds as paid in the presence of registering officers, such payments though often only apparent and not real, the creditors can successfully prove from the recitals of the bonds, but the debtors being always at a disadvantage for proving the contrary fail to do so.

I quite agree in the view that if the system is to be introduced at all it is necessary that it should be equally conclusive as against both. A one-sided arrangement is not possible. If the accounts are not to be given a conclusive effect there seems hardly any reason for introducing the system. As to some time limit being fixed for admitting oral evidence of repayments not entered in the accounts I am afraid majority of debtors will fail to insist on entries being made in due time, and my experience about debtors making payments of decrees out of Court and failing to insist upon their being certified by the creditors through the Court in due time justifies the above remark. To make them conclusive therefore would work hard against such debtors and to allow oral evidence against written accounts frustrates the very object of keeping such accounts. In my opinion cultivators possessing some measure of intelligence, the existence of which must be assumed to be necessary for making the introduction of duplicate accounts really valuable, will not suffer for the want of this system. Because they can always if they chose secure absolute proofs of their transactions by the provisions already existing in Chapter IX of the Dekkhan Agriculturists' Relief Act, or even I may say by sending their remittances to their creditors by postal money order if they found their creditors too cunning or dishonest to evade the passing of receipts. In this connection I should like to suggest that it would be better if the postal money order forms be so improved as to admit of a remitter's writing at the time of remittance on the reverse side of the acknowledgment, which is always obtained from the payee, the purpose for which the remittance was made, *i.e.*, in short the substance of the contents of the coupon generally retained by the payee. By such acknowledgments cultivators will have ready means provided to secure an absolute proof of their payments without even approaching the creditors. No doubt this would mean some expense to the debtor but having regard to the benefit to be secured, it is not to be considered so heavy as to prevent really intelligent debtors from taking advantage of the postal money order system. I may even go the length of saying that in the interest of cultivators the Government should remit or reduce the money order charges in such cases. It might be said that the postal agency cannot be availed of when payments in kind are to be made. But generally postal agency would be resorted to only in cases where receipts cannot easily be obtained from the creditor, and in such cases the cultivators would not find it difficult or less advantageous to realize in these days the value of their grain to remit it to the creditor by post.

As to the system of registration and license of money-lenders it must I think necessarily reduce the number of creditors and deprive a borrower of the choice and liberty of choosing his own creditor. Money-lending will thus be made a monopoly and consequently the money market will be dearer and more inconvenient for the poor agriculturist. It must also be remembered that all costs of registration and license will ultimately fall on the debtor.

As to possible checks by inspection of some accounts by Government officers it will mean an unusual interference with the private affairs of the people, leading to a further reduction of the class of money-lenders.

For the large number of illiterate and petty money-lenders on whom poor cultivators in small villages often very much depend, the system of keeping accounts will prove cumbersome and impracticable.

Having regard to the above difficulties and disadvantages, therefore, I am not in favour of the proposed system of keeping duplicate accounts, and I would like to remain content only with the suggestion of improving money order forms as indicated above.

No. 38.

Ratnágiri, dated the 29th July 1912.

From—A. R. Bonus, Esq., I.C.S., Collector of Ratnágiri;

To—The Honourable Mr. S. R. Arthur, I.C.S., on special duty, Poona.

I have the honour of submitting my reply to your letter No. 54, dated 5th July 1912.

2. It may be granted that no system of accounts or other similar precaution will serve to protect a fool and a spendthrift against the consequences of his folly.

3. As to Mr. Warud's system, it is to be noted that this was not and is not, in the case of his particular business, a safeguard. At least, that is not its primary function. It was rather an arrangement devised to facilitate the smooth working of a banking system, differing in no essential point from the system of any country banker in England dealing with a clientele of farmers.

4. Whether it would serve in any material degree as a safeguard in a very different set of circumstances, *i.e.*, where the object of the lender is not so much to transact business with ease and certainty as to overreach his illiterate debtors, is another matter altogether. I doubt if it would, and am supported in this view by the fact that even now the Act practically provides the same system. The duplicate copies of account are represented by the pass-book which the Act prescribes, and by the ledger account which the money-lender of course keeps. Entries to the debit of the debtor's account ought to appear in both ledger and pass-book, and ought to be attested by the debtor's signature or thumb-mark on his various bonds and promissory notes. Debit entries of accrued interest will of course not be so attested, but should be capable of proof by reference to the terms of the said bonds or notes. Entries to the debtor's credit ought to be supported by the lender's formal receipt, which is also provided for by the Act.

5. At this point I may observe that I am not clear as to what is meant by the last sentence of your paragraph 5. As it stands, it implies that if a client makes a money-lender a payment-on-account on January 1st, he cannot after February 1st offer any evidence at all to prove such payment. Evidently this is not meant. Paragraph 6 does not make the matter much clearer. It states that "after one month evidence will not be taken of repayments not entered in the accounts." How can one calculate the period of one month counting from a date unknown? If a money-lender files a plaint on February 28th, what is to prevent the debtor from alleging that on February 2nd he repaid part or all of the sum claimed? and that on one pretext or another the money-lender deferred giving a receipt?

6. I come to another point. Your paragraph 5 recites that "No proof of payment by money-lender to client should be admitted unless entered in the accounts and attested." This is very proper, but what of the entry in the accounts of accrued interest? This constitutes a claim against the debtor just as valid as a payment by the lender in cash; but is it to be expected that the average debtor will appear at the lender's summons in order that interest may be debited in the debtor's copy of the account?

7. What, again, of the case in which the two copies of accounts, when produced in court, are found not to tally? Suppose that through mistake or fraud a credit on a particular date appears in the client's account as Rs. 20 and in the lender's account as Rs. 2? Here it would seem that oral evidence must be admitted. Or suppose that both accounts produced do tally, and that the illiterate debtor claims that a certain payment made by him on a date two months before was as a matter of fact Rs. 10 in excess of what is shown in the accounts.

8. I have raised these points to illustrate my opinion that no mere system of book-keeping will, as the law now stands, suffice to protect the illiterate debtor against a fraudulent money-lender. The duplicate account book plan has however one decided advantage. It tells the debtor exactly how he stands at any particular moment; or would do so, provided that the punctual debit, in his copy of the account, of accruing interest could be provided for. In this connection I would suggest for consideration whether it would not be well to provide by legislation that every bond executed by an agriculturist should specify the date or dates in each year on which the interest account should be made up, and to require the claimant under any such bond to deposit with some public officer (say the Sub-Judge) within one month of each such date, a copy of the statement which an agriculturist is under section 65 of the Act entitled to demand. This would at any rate assist the Court "in taking history."

9. Assuming that the system of duplicate account books is introduced, the two experienced Deputy Collectors whom I have consulted agree, and I agree with them, that the entries in such books should be presumptive evidence only, but strong presumptive evidence all the same. I would say that the Court "shall presume" the entries, until the contrary is proved, to represent (so far as they tally) a complete record of the transactions between the parties. The officers referred to differ on the point as to whether the system should be made binding on illiterate savkars, one thinking that the result would be the savkar's driving harder bargains with his debtors in order to recoup himself for the extra cost of clerical assistance. To me it seems that if the system should procure security for the debtor, he ought not to object to a slight increase in the cost of accommodation; and that if it safeguards the savkar an honest lender would think a clerk's salary a cheap insurance.

10. There is a difference of opinion as to whether the account books should be paged and sealed and issued from Government offices. Seeing that the accounts are to be kept in duplicate, I think the precaution unnecessary. I am not in favour of a system of registering and licensing money-lenders unless and until less drastic measures of protection prove unavailing. And as to the inspection of accounts by officers, I append, with concurrence, an extract from the report of Mr. V. B. Sakhalkar, District Deputy Collector.

Extract from letter No. 1023, dated 27th July 1912, from the District Deputy Collector, S. D.

"The examination of these account books by Revenue officers while on tour does not appear to be feasible or useful either. In the first place, it will not be possible to get the debtor to attend the officer's camp with his books; since he is ever loth to come forward and to lay bare his indebtedness before a Government officer, which he looks upon as a sort of dishonour to himself. This attitude of the debtor was vividly marked at the time of the recent revision of the Record of Rights in Málwan, and it was certainly one of the causes which had considerably hampered that work there. Even supposing the debtor comes up with his book, it is scarcely probable that the savkar will appear with his (unless compelled by law to do so) to enable the officer to verify the entries in the debtor's book; and if he appears, the debtor can rarely be expected to make a complaint to the officer (even if he has one to make), in the face of the savkar with whom he has always to deal. Then the officer after examination of the book, would either endorse it as 'verified' or 'such and such a complaint has been made'. It must be noted that in cases of small amounts paid or recovered at intervals and relating to different transactions (and this often happens), the debtor rarely has a good recollection of all the items paid or received; and yet one is surprised to find that he would say that what has been entered is correct and that he has no complaint to make against it; and this Revenue officer's endorsement would go as evidence against him in the Civil Court. In the other case the Revenue officer's endorsement is quite useless unless the officer is authorized to make inquiry into the complaint, and record the result of it in the book; but this would mean a considerable addition to his work which, already overworked as he is, he cannot be expected to do as well as he ought to do. I think examination is both impracticable and useless."

Dated the 1st August 1912.

From—The Honourable Mr. S. R. Arthur, I.C.S., on special duty, Poona;

To—A. R. Bonus, Esq., Collector of Ratnágiri.

I have the honour to acknowledge with thanks your letter No. 3535 of 29th ultimo on the subject of duplicate accounts.

2. May I take it that, subject to the remarks in your letter, you approve of the system as a whole, namely, that duplicate accounts should be kept, one copy to remain with creditor and one copy with debtor, all entries to be

attested by both and no suit against an agriculturist to be brought without accounts thus kept being produced in Court*?

* The creditor can of course produce only his copy.

3. The Commissioner, C. D., would add "hat pawatis" to be given by creditor to debtor at the time of payments by the latter on the ground that the debtor will sometimes omit to bring his copy when making payment and under the "hat pawati" system, which has the merit that it already obtains in reference to revenue payments, the savkar will have no excuse for not giving a receipt there and then. I should like to know whether this proposal has your concurrence.

4. I am informed that a system akin to that proposed obtains between khot's in the Ratnágiri district and their tenants. Would you kindly inform me if this is correct and if so send me specimens of these accounts?

Ratnágiri, dated the 15th—16th August 1912.

From—A. R. Bonus, Esq., I.C.S., Collector of Ratnágiri;

To—The Honourable Mr. S. R. Arthur, I.C.S., on special duty, Poona.

I have the honour of replying to your letter No. 75, dated 1st August 1912.

2. As to your paragraph 2, my reply is in the affirmative.

3. As to paragraph 3, I would exclude the *hat pawatis*. The whole idea of the two-book system of accounts is to exclude and eliminate, so far as is possible, any separate record of business transaction; and the admission of the *hat pawatis* would be a retrogade step in the direction of attempting to protect fools against the consequences of their own folly.

4. As to paragraph 4, I have had enquiries made in the Ratnágiri *Taluka*, but cannot find that the khots there adopt the Warud Account system in dealing with their tenants. I should be glad to know in what particular part of the district this system does, according to your information, exist.

No. 39.

Ahmedabad, Shah-i-Bagh, dated the 14th August 1912.

From—R. P. Barrow, Esq., I.C.S., Commissioner, N. D.;

To—The Honourable Mr. S. R. Arthur, I.C.S, on special duty.

In reply to your No. 55, dated the 5th July 1912, in which you asked for my *opinion on the proposals contained in your circular letter to all Collectors and* District Judges, I have the honour to inform you that I am not greatly in favour of your proposed double account system as a means of safety for borrowers. The system has, without suggestion from the State, been introduced in various parts of Gujarát and it seems to me that if there is any real value in it as tending to protect the illiterate and to prevent litigation between lender and borrower it is bound to obtain favour gradually and in time to be adopted generally. Before a genuine demand arises I do not think it is at all necessary to force it on people.

2. If your proposal be adopted and the double account system rendered obligatory, it will, in my opinion, be most dangerous to give to all attested entries in the account books the status of "conclusive proof". For years to come the illiterate borrower will remain entirely in his savkar's hands, and generally he will do exactly what his savkar bids him do, affix his thumb-mark against any entry whatsoever if the savkar presents it to him for the purpose, and in some cases will possibly affix it to non-existent entries, on the pretext that trouble will be saved in future transactions. Very frequently he will leave the savkar to keep both copies of the account book and that he will ever dream of asking a literate friend to accompany him to the savkar's in order to verify the correctness of an entry

made, I do not believe. In the case of the illiterate debtor the duplicate book and the thumb-print will afford no more real protection than the existing system does and it would be most unsafe to allow the attested entry to be more than "presumptive evidence".

3. I am not in favour of the suggestions that Government should issue the account books to be used, that Revenue officers should have any responsibility cast on them for checking entries or that money-lenders should be registered. There lies on Government no obligation to superintend the conduct of private business.

No. 40.

The District Court of Ratnágiri, dated the 27th July 1912.

From—P. J. Taleyarkhan, Esq, Acting District Judge, Ratnágiri.

To—The Honourable Mr. S. R. Arthur, on special duty.

With reference to your letter No. 54, dated 29th June last, I have the honour to state my views as under.

2. Before applying a remedy it is necessary to understand exactly how things stand at present. I will therefore first endeavour to place my views before you on this point.

3. The onus of adducing satisfactory proof on all points connected with the taking of accounts, except only on the question of repayments, is on the creditor. If he has not kept accounts, or suppresses them, it is he who generally suffers. Those who can keep accounts, *viz.*, professional money-lenders, generally do keep them, and they also generally produce them, for they cannot suppress them in one case and produce them in another without committing perjury. Besides, a professional money-lender is presumed to have accounts, and if he does not produce them, it is presumed that he does not do so because if produced they would go against him. There are, however, many, besides professional money-lenders, who lend money and who generally do not keep accounts, because they cannot keep them, or cannot do so without trouble and expense. They generally suffer, and sometimes do so undeservedly.

4. As things stand, therefore, it is the creditor who generally suffers to a greater or less extent in the absence of proper accounts, except only in the matter of alleged repayments, in which case the debtor generally suffers if he has made payments without taking receipts. This is as it should be, for it is the duty of the creditor to keep proper accounts and by that means satisfy the Court that his claim is just: and it is the duty of the debtor to see that he gets receipts for the payments that he makes and so satisfy the Court that he has really made the payments that he alleges to have made. The result is arrived at on strict legal principles, and if it is not what it ought to be it is principally because the party on whom the onus of proof of particular facts lies has failed to discharge the onus to the satisfaction of the Court.

5. The principles on which the Courts act have an educative value for the public. The creditors learn by bitter experience that without accounts they generally come to grief; and it is also brought home to the debtors that without receipts it is generally hopeless to obtain credit for payments. In this connection it should be borne in mind that outside the four districts to which the Act was originally applied, the cases we have been hitherto getting relate mostly to very old transactions entered into at a time when there was no need to keep accounts and none were consequently kept except by professional money-lenders. In many of these cases, moreover, accounts had to be taken of the profits of mortgaged property enjoyed by the creditor for a great many years, and as under the terms of the bonds the profits were mostly to be enjoyed in lieu of interest and without accounting for the same, no accounts were naturally kept. It is generally in these cases that the element of conjecture enters into the taking of accounts as in the absence of accounts of what the land had actually yielded the Court has to determine the profits largely on oral evidence and the supposed capacity of the land. As to this, however, it may be observed that creditors can rarely be trusted

to keep correct accounts of the produce of the lands and the expenses of cultivation, so that even where accounts are kept the Courts are not likely to attach much weight to them. It is for this reason that Section 13-A of the Act provides that where the Court is unable to determine what profits have been actually received, it may fix a fair rent and charge to the mortgagee such rent as profits.

6. On the whole, I think there is reason to believe that if the present state of things is allowed to continue we will, at the end of 20 years from now, rarely find a money-lender coming to Court without accounts. Those who cannot keep accounts will probably give up the business of money-lending as unprofitable and risky. Indeed, some of them appear to have already begun to do so. I cannot, however, speak equally hopefully of the agriculturist-debtors as a class. I am afraid no amount of bitter experience will teach them not to make payments without receipts under any circumstances. They will learn that only when they rise sufficiently in the scale of intelligence to profit by experience.

7. Now, to come to your proposals. I submit with very great deference that they are not likely to further the cause of justice, but on the contrary will do serious harm to the ignorant aud illiterate agriculturists if carried out in their entirety. When your proposals are analysed, what they really come to is not whether we should have a system of accounts such as you suggest, but whether we should not accept a man's signature to a writing as conclusive or at any rate presumptive proof against him, and whether we should not preclude a debtor from pleading a payment of which there is no written proof. For the accounts will not be wanted at all if the two latter proposals are accepted. Your duplicate accounts will on one side show the loans made to the debtor and on the other the payments made by the debtor and the profits received by a mortgagee-creditor in possession of mortgaged property. Now, as regards loans, they are almost always evidenced by bonds or khatas signed by the debtor, and where they are not, they are evidenced by accounts kept by the creditor in the ordinary course of business. If you are going to accept the signature or thumb-impression of the debtor on the accounts as conclusive or even presumptive proof, there is no reason why you should not accept his signature on the bond or the khata in the same way. The entry in the accounts would not be a whit more reliable than the bond or the khata. The entry will necessarily be made to correspond with the contents of the bond, whether the same are true or false. It follows that, so far as proof of loans is concerned, the accounts would be superfluous. The accounts would be equally superfluous so far as the proof, or rather the absence of written proof, of payments is concerned. For, where the debtor is intelligent enough to secure written proof of such payments, he is as likely to insist on receipts in the absence of a duplicate system of accounts such as you propose as he would be to have the payments entered in the accounts if the system of accounts were to be introduced. Conversely, if he is to be precluded from pleading any payment which does not appear in the accounts, he may as well be precluded from pleading a payment for which he has not taken a receipt. Lastly, as regards the profits of mortgaged property where the mortgagee is in possession. Here, no doubt, if the accounts are made compulsory, the creditor would have to keep some sort of accounts. There would, however, be no guarantee that he would show the actual receipts in the accounts. Even now the creditor's accounts of profits, where they are kept, are rarely reliable, and the Courts almost invariably determine the profits either on oral evidence or according to the rule laid down in Section 13-A of the Act.

8. Turning now to what I consider to be your real proposal, *viz.*, whether the debtor's signature or thumb-impression to a writing should not be accepted as conclusive, or at any rate presumptive, proof against him, and whether he should not be precluded from pleading a payment for which there is no written proof. It seems to me, in the first place, that underlying these proposals is an assumption that the majority of savkars are honest and that the debtors who cannot take care of their interests are in the minority. I submit that this assumption is not well-founded; at any rate it would not be safe to accept it as a fact and to legislate on that basis. If the definition of 'agriculturist' is amended and the Act is in future confined to *bona-fide* agriculturists, as I assume it will be, the only debtors who will be entitled to the benefit of the Act will largely be illiterate and ignorant peasants, and you will be legislating mainly for them and for their protection. In

the next place, I submit that your proposals under consideration are fundamentally opposed to the principle of the Dekkhan Agriculturists' Act. The whole *raison d'etre* of the Act is the protection of the fool from the consequences of his folly. It may be that the Act is trying to achieve an impossibility, but so long as you accept the principle of the Act and the necessity for its existence on the Statute Book, I do not see how you can consistently support your proposals. For instance, I fail to see how you can consistently allow a party to show that a solemnly made registered sale-deed was really a deed of mortgage, and at the same time not allow him to impeach the accounts such as you propose shall be kept. I would not accept the accounts even as strong presumptive proof, for that would practically render them conclusive. To my mind the accounts by themselves would have very little intrinsic value unless the debtor was literate or the creditor was a man of unquestionable honesty or there were other circumstances which went to show that they were reliable. And to give the accounts an artificial value would only lead to injustice. Justice is best done when the Court is left free to weigh each piece of evidence for itself and receive it for what it is worth. If the accounts are of any intrinsic value, they are bound to have weight with the Court. Where, however, they do not appear to the Court to be reliable, it would be wrong to give them an artificial value by legislation and force the Court to act upon them.

9. Accounts written up from day to day in the ordinary course of business, where all the transactions are entered as they occur and the balance is drawn at the close of each day and carried forward to the next day, are intrinsically of far greater worth than accounts such as you propose could ever be, and I should be sorry to see the former replaced by the latter. Accounts of the former description are at present generally kept by professional money-lenders, and they will be only too glad to replace them by accounts such as you propose, which would give them greater facilities of committing fraud on illiterate and ignorant debtors. If these money-lenders are honest now, they are so of necessity, for it is very difficult to successfully tamper with accounts regularly kept in the ordinary course of business. Remove the necessity, and they are sure to take advantage of the opportunity to commit fraud. For instance, small loans, for which no bonds are taken, could at present only be proved to the satisfaction of the Court by regularly kept accounts, which it is by no means easy to cook up successfully. But under your system of accounts, fraudulent entries of such loans could easily be made where the debtor is illiterate and blindly puts his thumb-impressions wherever the creditor asks him to put them. He may have taken his pass-book to the creditor for having a repayment entered therein, and the creditor instead of entering the payment might enter a small loan for which no bond would ordinarily be necessary, and the debtor might affix his thumb-impression to the entry believing it to be entry of payment made by him.

10. The proposed system of accounts will not furnish any more data to the Court than are at present available, except in regard to the profits of mortgaged property in possession of mortgagees. For the data in regard to loans which the accounts will furnish will be the same as are now furnished by bonds and khatas or by accounts kept in the ordinary course of business. And the data in regard to repayments will be the same as are now furnished by receipts where receipts are taken by the debtors. The creditors are not likely to enter payments in the accounts unless the debtors insist upon that being done, and those debtors who are intelligent enough to do that will also presumably take care to obtain receipts in the absence of a system of duplicate accounts. The creditors who are honest enough to enter payments in the accounts without insistence on the part of the debtors will also presumably be honest enough to admit such payments in Court even in the absence of a system of duplicate accounts. As regards accounts of profits of mortgaged property, I have already said that such accounts can rarely be trusted.

11. I do not think that exclusion of oral evidence of payments will teach agriculturist-debtors to secure written proof. It is not that they are at present not sufficiently cognisant of the importance of securing a receipt. In fact they generally ask for a receipt, but being simple-minded they allow themselves to be easily put off, and also they cannot afford to show their mistrust of their savkar by persisting in their demand. I do not think it would be right to penalise their simplicity,

or rather their stupidity, by excluding oral evidence. Besides, there is danger that if oral evidence is excluded the savkar might deny payments which he now sometimes admits because he cannot very well deny them in the face of evidence which he knows will be forthcoming and which, though oral, may sometimes be very conclusive, as for instance, where a large quantity of grain has been taken from the debtor's field to the savkar's house in the presence of a number of persons. He also sometimes admits payments because he is afraid of denying them on oath. You cannot consistently exclude oral evidence on high moral grounds in one matter and allow it in other matters. Besides, it would be anomalous to allow a non-agriculturist to offer oral evidence in proof of a payment and not to allow an agriculturist to do so.

12. I am not in favour of introducing a system of registration and license of money-lenders. That would create a monopoly in money-lending business in favour of a limited class, and would seriously affect agriculturists by obliging them to borrow from that class on less favourable terms than they could get if the field were not restricted.

On the whole, I am of opinion that it is best not to make any change.

Reports received from some of the Sub-Judges and from the Government Pleader are submitted herewith.

The District Court of Ratnágiri, dated 20th July 1912.

From—V. G. Kaduskar, Esq., Additional First Class Sub-Judge, A. P., Ratnágiri;

To—The District Judge, Ratnágiri.

With reference to your endorsement below the letter of the Hon'ble Mr. S. R. Arthur, President of the Dekkhan Agriculturists' Relief Act Commission, dated 9th July 1912, I have honour to state my views as under.

The Honourable Mr. Arthur considers it desirable to obtain certainty in fixing the liability of the agriculturist-debtors in their dealings with money-lenders, to compel the parties as a statutory obligation to keep regular accounts of their dealings, and to render any additional evidence inadmissible in variation of the entries in these accounts. He also enquires if it would not be desirable to create licensed money-lenders and to restrict the money-lending business to them only.

This last suggestion is in my opinion drastic and revolutionary. The great and indispensable need of agriculturists is money. Money is needed to buy cattle, to buy seeds and manure, and occasionally to make improvements of their land, and in hard seasons, which are unhappily not rare in this Presidency generally, their lot is very miserable. So that any law that has to be enacted in the interests of agriculturists should be such as to encourage advance of loans to them. Any law that would tend to discourage loans to them would assuredly instead of helping and bettering the condition of the agriculturists of small and large holdings, only result in rendering their condition worse, and the creation of licensed money-lenders would obviously restrict the field of money-lending and would create a monopoly. At present there are many whose profession is not to lend money but who invest their savings on the security of land which affords a safer security. Their money is thus utilized for the betterment of the land in the country and in enabling agriculturists to tide over their difficulties which never end. Such persons whose profession is not to lend money would have no chance to lend their savings to the needy agriculturists. Their number is not small and if we preclude them from lending money the field of money-lending business would be materially contracted. This will have the most prejudicial effect on agriculture in the land and should not be attempted under any circumstances. To lend money on fair interest is a legitimate business and must in all civilized countries be open to all. To create a monopoly in this respect would render capital, such as is available, idle, which would mean no good either to those who possess money or to those who are in need of money. I would venture to add that the proposed remedy would be worse than the evil itself to be grappled with. There is only one remedy and that remedy is to organize a system of mass education.

A tolerable knowledge of the three R's spread broadcast would alone enable the illiterate agriculturists to understand their own interests and to protect them effectually. Mere legislative palliatives cannot do, but would only give rise to new difficulties. For whenever restrictive laws are enacted those who are affected thereby would invent new methods to defeat them and would add to the difficulties of the situation. The Dekkhan Relief Act such as it is, is an apt illustration of the above. When the Act was enacted many persons of education who felt for the helpless position of the ignorant agriculturists who were little better than serfs and slaves of the more intelligent and powerful savkars, readily lent their support to the action of the Government in enacting the Dekkhan Agriculturists' Relief Act. Not that there was no opposition. It was an opposition from men like Sir Raymond West who had much reverence for the sanctity of agreements and who apprehended mischief from this interference with the relations between savkars and their debtors. They were at the time overruled and the Dekkhan Agriculturists' Relief Act became law. Can it be now said that the Act is an unmixed blessing? One would hesitate to answer it affirmatively. I for myself would strongly oppose the idea of creating a class of licensed money-lenders.

As regards the other question regarding accounts, I am not in favour of the proposal contained in the letter of the President of the Commission. At present we have got money-lenders who keep regular accounts and who do not. The latter have consequently to depend on their bonds. Those who keep accounts also obtain bonds from their debtors. Practically there are rarely any suits for recovery of money lent without any bond to evidence the loan or without accounts. Those of the creditors who keep regular accounts can give satisfactory history of their transactions and in their case the present suggestion cannot be of any material use. In respect of those creditors who depend entirely on bonds it is often difficult to ascertain the history of their dealing, especially when the parties to the bond and attesting witnesses are dead and the Courts have to draw their own inference, relying on the recitals in the bonds as to the consideration and on the endorsement by the Sub-Registrar. If the recitals contained any indication that the amount could not have been lent as a cash loan, the creditor fails for want of evidence. It is to their advantage if they keep accounts so as to satisfy the Court as to what sums were really lent. But to compel each money-lender to keep accounts as proposed would be of little practical use especially when the creditor is not a regular money-lender and has only 2/3 debts, lent to others, and creditors of this class are not few. Are regular accounts possible in their case? Accounts to be of use should be written up from day to day, making entries as the dealings of each day occur with balance shown at the end of the day and carrying it forward to the next day. Such accounts alone can derive any credence in the Court as it is difficult to tamper with them or to recast them wholesale. You cannot expect such accounts from creditors who have lent only 2/3 sums. Their debtors do not make payments daily and the creditor has consequently to make no entries in his accounts. It is thus evident that you cannot expect anything like regular accounts from such creditors. In the case of such creditors the proposed form of accounting would mean, so far as the advance of loans is concerned, a repetition of the statement in the bond and nothing more. Then the bond itself serves that purpose sufficiently and with better guarantee. The bond is on a stamp paper and is registered and the Sub-Registrar has to endorse if money has been advanced in his presence or if the debtor admits the receipt of the loan. If such writing cannot serve our purpose, I am unable to understand how the proposed system of accounts, which cannot be regular accounts, can improve matters. As regards repayments made by debtors, it goes certainly very difficult for them to prove them when they have not got any receipts and Civil Courts are slow to accept oral evidence in that respect. It is not that debtors do not make payments. Many do pay, but when the dispute arises and the savkars deny the payments the debtor is practically helpless. They know that they fail in Courts when they have no receipts and yet they are stupid enough not to insist on obtaining receipts. To remedy this evil Section 64 was enacted, but it could not be worked, because its object could be only gained if debtors demand a receipt. The section became practically useless as it only created an obligation on one side and no inconvenience to the other side. If it were enacted along with Section 64 that debtors shall not be at liberty to allege payments in the absence of receipts and if the debtors were made

to understand that they cannot plead in Court any such payment without receipt, then there would be a much greater chance of the Section 64 being successful. I would therefore propose that such a provision as to the disability of debtors to prove payments without receipts should be inserted in the Dekkhan Relief Act. I am afraid that such a provision may work hardship in many cases owing to the simple and illiterate character of the agriculturist, but a general knowledge that such a rule is enacted would not fail to induce debtors not to make payments without receipts.

Deogad, dated 18th July 1912.

From—K. G. Tilak, Esq., Sub-Judge, Deogad;

To—P. J. Taleyarkhan, Esq., District Judge, Ratnágiri.

With reference to your No. 1608, dated the 9th instant, I have honour to submit my observations arrived at after discussion with the pleaders of this Court.

Operation of Chapter IX of the Dekkhan Agriculturists' Relief Act.

There will be no harm if the provisions of Chapter IX of the Dekkhan Agriculturists' Relief Act be extended to those districts to which it is not as yet extended, but it is questionable what material advantage there could be of those salutary provisions when the experience obtaining in the districts to which it has already been applied shows, as observed by the Commission in their letter, that the provisions are successfully evaded in practice. It is a well-known fact that the present generation of the agriculturist is not so simple minded as to be easily duped by the creditor. It seems that the provisions of Sections 64, 65 and 66 are evaded both by the creditor and the debtor. By the former, because he is naturally unwilling to commit himself, and by the latter, because he is desirous to have as many escapes for himself as he possibly can. Thus to my mind the evasion or non-operation of the provisions of the chapter is more due to the cunning of both the sides and it is not easy to remedy the evil effectually. In this connection it may, however, be remarked that honest agriculturist-debtors can resort to postal money order if they really fear or suspect that their payments will not be acknowledged or credited to their accounts and they have now begun to realise the value of this remedy. It is difficult to help one who is not anxious to help oneself.

Double Accounts.

Presumably this system will have to be introduced in addition to the initial legal writing, *viz.*, bonds, deeds, etc., and with the object of having at once and at one place an authentic collection of all the dealings connected with transactions with agriculturist-debtors. No doubt, the measure, if honestly and successfully carried out, will be premium on honesty. Virtually it is an amplification of the provision for issue of pass-books, etc., in Sections 65 and 66 of the Act. It is expected to check fraud and to ensure a correct history of the accounts between the parties and there can be no objection to the introduction of the same, at least in some districts or parts of a district where the same be more needed and as a tentative measure only for a time. The really difficult question, however, is whether it should be made compulsory and should have conclusive evidentiary value.

In my humble opinion it should not be made compulsory because :—

(*a*) An addition of the sort to the already somewhat severe and one-sided provisions of the Dekkhan Agriculturists' Relief Act will make the enactment more unpopular and it will have to be considered whether to do so will be a good policy.

(*b*) It will be difficult and many a time infeasible for the creditors who carry on business to a small extent and are themselves illiterate to keep such accounts.

(*c*) The same will be the case with females and minors who may inherit the business of a creditor because all these persons will have almost entirely to depend on the integrity of others, that is, clerks, etc.

(*d*) In order to meet future contingencies a dishonest creditor may with impunity often make false entries or no entries at all.

(*e*) A dishonest money-lender may demand the duplicate on pretext to insert payments and may withhold it altogether or may issue another in substitution showing that the transactions are but fresh.

(*f*) To procure at every entry the thumb-impressions or signatures, etc., as the case may be, of both the creditor and the debtor cannot be easily done. This cannot be done unless they both come together with the duplicates of each, and as they may often be residing at different and even at distant places it is not easy to be done.

(*g*) Thumb-impressions cannot be of the desired certainty and value unless they are taken by a trained man, and this is not easily feasible.

(*h*) The necessity for a compulsory measure of the kind is likely to diminish as many a creditor is becoming more vigilent to resort to law at an early stage tc avoid history of transactions and other trouble.

For these and many more real difficulties it is seldom desirable to make the system compulsory.

Again it should not have conclusive evidentiary value because :—

(*a*) It will be adopting a measure much contrary to the spirit of the Act. If written transactions of much more importance and more solemnly entered into are liable to be set aside by parol evidence by the provisions of section like 10 A it will not stand to reason to shut out extrinsic evidence in such petty matters.

(*b*) It cannot have the value of conclusive evidence unless the entries as well as the signatures or thumb-impressions, as the case may be, are proved by satisfactory evidence. Moreover, thumb-impressions will have to be proved by experts and they are not available at lower Courts without heavy expenditure.

(*c*) Even if given a conclusive evidentiary value, it will often be of more advantage to the creditor than to the debtor, because he can secure his own object by omission of important items from the accounts or by making suitable entries and the debtor will be estopped from bringing evidence in variance of the same.

For these and many more reasons that can be given, the system should not have conclusive evidentiary value.

In short, the system should not be introduced as a compulsory measure and should not have conclusive evidentiary value. Honest creditors may avail themselves of the same and their position is bound to be more secure. Instead of keeping the troublesome double accounts the creditor may avail of furnishing by a registered post parcel (at debtor's cost) to the agriculturist-debtor at the close of the year a statement of the receipts and disbursements during the year and this will awaken both of them to the mistakes or omissions, if any, and they can seek the proper remedy. In this way the position of an honest creditor will be much more secure and the agriculturist-debtor will receive the proper and legitimate help if he be anxious and willing to help himself.

Whether creditor or debtor, if he vigilently adopts the means mentioned above as suitable and advantageous to him, he is sure to have thereby the advantage of presumptive evidence in his favour at a law Court.

It should not be obligatory on the debtor to prove payments within 30 days. It is difficult to know where he should prove it. If it be in Court, it will be equal to instituting a suit for the same. This procedure is expensive and troublesome, especially in the case of payments of trifling amount. To prove it before the Police or the Magistracy will have many difficulties and drawbacks.

Proving payments within 30 days.

Thus the conclusion arrived at is that the double account system should not be made compulsory and should not have conclusive evidentiary value. However, as an experimental measure it may be made compulsory in a suitable district or part of a district without giving it conclusive evidentiary value.

The account books need not be paged and sealed and issued from a Government office. The attestation of entries is sufficient safeguard if evidentiary value be according to the view of the Court in each case.

Paging and sealing of account books.

This will lead to very unwholesome results. It will open a door to fraud, planning and dodging and people will often try, out of jealousy, etc., to attribute fraud to money-lenders and will try to get it proved by combination.

Licenses.

If it be thought fit to introduce the system in one way or the other the inspection of accounts by Assistant Collectors or Mamlatdars or other Revenue Officers will not work well, because they are already over-worked and an accurate personal supervision is not possible. This work may, perhaps, be entrusted to Inspecting Sub-Judges or Deputy Nazirs where available, who can do the work with more advantages and convenience.

Inspection of accounts.

Chiplun, dated the 17th July 1912.

From—J. A. Samant, Esq., Sub-Judge, Chiplun;

To—The District Judge, Ratnágiri.

With reference to the system of accounts which has been proposed by the Hon'ble Mr. S. R. Arthur in his letter dated the 29th of June 1912, a copy of which was forwarded by you to me for report, under your endorsement No. 1608 of 1912, I have the honour to report that after discussing the matter with some of the pleaders of my bar, I have come to the conclusion that the proposed system has several merits in it and deserves to be recommended for being introduced into the provisions of the Dekkhan Agriculturists' Relief Act, but under certain limitations and modifications as I shall suggest presently. There is no doubt the introduction of such a system is well calculated to relieve the Sub-Judge from his present task of having to grope in the dark between opposing falsehood on either side, when he has to sit down to settle the amount due by an agriculturist-debtor to his savkar. The proposed system would indeed not be quite free from some serious defects, but it would supply the Court with a rough and ready foundation to start with when commencing to take an account between the parties to a transaction and when it has to decide whether any alleged payments have or have not been made. The method which the Court usually adopts at present under the existing law is itself not very satisfactory. It believes neither party completely, but takes a middle course and cuts the amount claimed to some extent. The introduction of the proposed system would not make the matters worse than what they are at present.* But it has this one advantage over the present uncertain state of things, namely, that it will stop much false oral evidence which the Court has to listen to under the present system and will thus save some of the Court's time. The new system is calculated to be fair to all honest creditors and agriculturist-debtors alike. However I think that as the agriculturists, as a class, are usually illiterate persons, the rule will work very harshly against them if the entries in the accounts kept under the proposed system are made by law to be conclusive evidence of the truth of the facts stated in them. In my opinion therefore the proposed system should be so introduced as to make the entries in the accounts kept in accordance with it be regarded as merely presumptive evidence of the truth of the facts mentioned in them. The agriculturist should be given an opportunity to disprove the correctness of the facts stated in the entries. No doubt, in practice this will give a loop-hole to the agriculturist to prepare and produce false evidence, as is sometimes done at present, still, to close the door altogether against them will leave them entirely at the mercy of their savkars and the entries made by them in their accounts. If the entries are made presumptive evidence it will stop the production of all false evidence on behalf of the creditor at least and will much reduce the chance of the production of similar evidence on the part of the agriculturist also. In order to minimise false evidence on part of the creditors and to induce them to write true entries in their accounts and in this way to make the proposed

system more useful in practice, I would suggest that a provision should be made in the Dekkhan Agriculturists' Relief Act legalising a certain fixed rate of interest below which the Court ought not to have any discretion to descend when taking an account of the dealings between the parties before it. In the case of mortgage transactions the minimum rate should be fixed at 12 per cent. per annum and in the case of simple money bonds the said rate should be fixed at 15 per cent. per annum. If the parties have agreed to higher rates than 12 per cent. in the one case or 15 per cent. in the other case the Court should have a power to reduce the same to the above minimum rates. On the other hand, if the parties have already agreed to rates lower than the above minimum rates, the rates actually agreed between the parties should not be interfered with but should be used in fixing the balance which may be still due. What happens at present is that the parties are not able to know beforehand what rate of interest the Court would regard as reasonable to allow between the parties. One Sub-Judge may regard 15 per cent. per annum as a reasonable rate if agreed to between the parties in the case of mortgage transactions, and 25 per cent. per annum as a reasonable rate in the case of simple money bonds if the same has been agreed between them. Another Sub-Judge may regard the said rates as too exorbitant and reduce them to 9 per cent. per annum and 12 per cent. per annum respectively. Such a difference in the rates which different Sub-Judges would allow as reasonable makes a great difference in the amount which will be found to be due at the foot of the transactions after the accounts are made up. Under the present system when the savkar files his suit, he cannot be sure as to what minimum amount he will be able to get after the Sub-Judge enters into accounts. He therefore begins by denying all payments which he has actually received from his debtor and thus embarrasses the Sub-Judge in his inquiry into the history of the dealings. This leads to the production of false oral evidence on either side which the Sub-Judge has to reject as untrue or exaggerated and unworthy of his belief. Consequently if the consideration of the Sub-Judge in reducing the rate of interest is limited by law to the minimum of 12 per cent. and 15 per cent. as stated above, it would ensure the creditors that in the worst of cases they will be able to recover so much amount in the least. This will have the corresponding effect of making the savkars more honest in writing true entries in their accounts of payments actually received and of inducing them to admit the same before the Court.

Another amendment which I would suggest to be made in the provisions of the Dekkhan Agriculturists' Relief Act is that in cases in which the Court directs the amount found due to be paid by instalments, it would be made compulsory on the Court to award future interest at 6 per cent. on the amount awarded. When the creditor is thus assured to having a future rate of interest he would have no objection to receiving the amount found due by instalments. At present he finds his amount greatly reduced and the same directed to be paid by instalments without any further interest. This makes him all the more dishonest and put forward false allegations.

If the proposed system of accounts is introduced it would not be made compulsory on all the creditors alike. Illiterate creditors ought to be under no obligation to keep such accounts. Besides not a few transactions are entered into between private persons without any expectation or idea that they will have to go to Court in connection with them. To give an illustration: say, a man is well acquainted with an agriculturist, probably he also cultivates his lands; the cultivator one day at an odd hour approaches the man and tells him that he is badly in immediate need of Rs. 50 to purchase a bullock for his plough, or to celebrate his son's marriage, and also he tells him that unless he advances the amount thus wanted by him he will not be able to cultivate the land or to celebrate the intended marriage; he thus poses him by a thousand importunities to advance the amount to him; the man at last yields to the repeated importunities and advances the loan to the agriculturist and takes a bond from him for his security. If the keeping of accounts is made compulsory even in the case of such transactions, there will be very little chance of the said agriculturist obtaining such a loan from the said man and the result will be that he would be compelled to approach a professional money-lender to borrow the amount from him by executing a bond for double the sum. Consequently the keeping of accounts

ought in no case to be made compulsory. It should be left optional with a creditor whether to keep or not to keep accounts. If he keeps accounts and produces them before the Court, the entries in them should be regarded presumptive evidence of the truth of the statements contained in them. If the entries are made presumptive evidence, it will induce the creditors to keep accounts and produce them before the Court. This is the utmost which the law ought to provide in connection with the matter of keeping accounts and the entries made in them. Any further or stricter provisions will tell harshly either on the persons who have to figure as creditors before the Court or on the debtors.

From enquiries made by me it appears that there do not exist any savkars in this district who carry on such a large money-lending business as the late Rao Bahadur Warad of Sholapur or anything reasonably approaching it in volume. The usual class of money-lenders to be met with in this district ordinarily do business to the extent of Rs. 500 to Rs. 5,000. It would not be possible to expect any regularly kept accounts in the case of such small concerns, to the same extent as we may naturally expect to be kept in such big concerns as that carried on by the late Rao Bahadur Warad. It would have been very difficult, almost impossible, for Rao Bahadur Warad to carry on his said big concern, unless he kept regular accounts. He must have naturally engaged some karkuns to keep accounts. On the other hand, in the case of savkars whose business does not exceed Rs. 500 to Rs. 5,000, they do without keeping regular accounts of their dealings, for, they generally depend on the bonds obtained by them, and they are not many. It is enough for them if they keep small strips of papers having entries of the payments, if any have been received. If the debtor is honest and pays their amount in full privately at the agreed rate of interest they do not deny the payments received from him. But if the debtor refuses to make such payments privately and they are consequently compelled to go to Court to recover their amount they take into account the provisions of the Dekkhan Agriculturists' Relief Act in favour of the agriculturist and deny all the payments received by them. As the transactions of such creditors are very limited they do not find any need for keeping regular accounts, and consequently if they are compelled to keep accounts, they will write no entries of payments received. But if the rates agreed between the parties are left by the Court untouched or if they are sure that the Court will not reduce the same below a given minimum rate, they will keep accounts and even produce them before the Court.

I am not in favour of the proposal of introducing a system of registration and license of money-lenders. Such a system will work very heavily on the agriculturists It will have the effect of reducing the number of creditors to whom the agriculturists can at present approach, with the result that they will not be able to obtain loans on their own favourable terms and from persons with whom they are already acquainted. They will be driven to the mercy of the registered and licensed money-lender, who will be a greater evil than the present average money-lender.

I have not to make any further suggestions or reservations with regard to the proposals made in the said letter of the Honourable Mr. S. R. Arthur.

Ratnágiri, dated 18th July 1912.

From—L. V. Parulekar, Esq., Government Pleader, Ratnágiri;

To—The District Judge, Ratnágiri.

With reference to your endorsement dated 9th July 1912, below letter No. 54. dated 29th June 1912, from the Honourable Mr. S. R. Arthur, on special duty, in connection with the feasibility of introducing in the working of the Dekkhan Agriculturists' Relief Act a system of keeping of duplicate accounts, I beg to make the following suggestions.

1. It will be advisable in the interests of money-lenders as well as agriculturist debtors that there should be a separate account, kept in all cases in duplicate, of all transactions between money-lenders and agriculturist-debtors.

Now-a-days, we see that in almost all cases no accounts are kept and as keeping of the accounts is not obligatory, no inference of an adverse kind can be drawn against money-lenders and the difficulties of the Court in tracing the history are always enhanced on this account and therefore this system will be an important help to the Courts in coming to the right conclusion.

2. If this system is to be introduced, it will be necessary to make it obligatory on all money-lenders, literate or illiterate.

I think keeping of this kind of accounts will not be a hardship worth consideration to illiterate money-lenders. Because, if in any one case an illiterate money-lender has got transactions of a large extent, he has necessarily to keep a clerk to help him independently of the provisions of this Act; for it is not possible for him to manage his affairs otherwise. I know this as a matter of fact, so far as this district is concerned. If, on the other hand, he has got limited dealings, he can get this kind of work done by some one who is easily available, just like in cases where an illiterate money-lender gets his bonds or compulsorily registrable documents written by others.

3. It is also necessary to keep duplicate accounts, one of the copies remaining with the debtor.

This is the most important provision which will keep an effective check on the accounts of the money-lenders.

4. All entries of disbursement or repayment should be attested by the signature *and* the thumb-impression of both the creditor and the debtor.

Thumb-impression, I think *in addition* to signature, is necessary in all cases because there are very many instances where the executants deny their own signatures and it becomes difficult to prove them especially in cases of indifferent writers. This will obviate the above difficulty by the additional safeguard of thumb-impression, as suggested, without any burden on the debtor or the creditor. Even in cases when a person is unable to make his signature, I think it would be better to have, in addition to the thumb-impression, his signature made for him by some other person. By this mode one additional witness is secured to prove the transaction.

5. There appears to be no objection to the provision of making it obligatory for a plaint to be accompanied by a copy of the accounts.

But to make the entries in the accounts conclusive, and to exclude every evidence in proof of the entries not made therein, or in variation of entries made therein, will work an entreme hardship under the present state of affairs. It counts upon a working based upon an assumed human infallibility. However these entries will be important primary evidence until rebutted by better kind of reliable evidence. Of course in such matters oral evidence will be of very little or no use and Sections 91 and 92 of the Indian Evidence Act will apply since the entries become "any matter required by law to be reduced to the form of a document."

6. In the letter under reference, amongst the proposals the following appear:—

(1) "No proof of payment by money-lender to client should be admitted unless entered in the accounts and attested."

(2) "No evidence of payment in cash or kind by client to money-lender should be admitted after the expiry of 30 days from the alleged payment."

The real applicability of the latter suggestion, however, is not properly understood. For, before any proceedings are taken in any Court, there cannot be any possibility of tendering any evidence or admitting the same.

Suppose there is a course of transactions between a money-lender and a debtor and no suit is filed in Court in connection with the same. But during the course of such transactions, a payment of any kind is made by a debtor and the creditor refuses to enter it in the account.

In such a case what is the debtor to do? Can he go to a Court and tender evidence within 30 days "from the alleged payment?" And if so, to what Court and in what sort of proceeding?

This proposal will, however, be possible only in payments made out of Court after the decree to the decree-holders in satisfaction of the decree. But before any proceedings are taken in any Court, or a decree is obtained, how the proposal will work is not clear.

I may therefore suggest that the proposal should be worded as below :—

"No proof of payment by money-lender to client or by client to money-lender be admitted, etc."

This should he made applicable to both ; and no evidence of payment should be made admissible unless the one gives a registered notice intimating to the other of the non-compliance with the provision of the suggestion or rule, and asking him to comply with the same within 30 days of the alleged payment. And thus the provisions will be equilateral.

7. No doubt the system will be at its beginning involved in some difficulties as every new system is bound to be. Still as the law can never protect a fool who is incapable of protecting himself, it is impossible completely to prevent the possibility of any fraud or carelessness being practised by any person. But when the people know that they will materially suffer on account of their fraud or carelessness such kind of instances will be reduced to minimum.

The principal way to obviate the difficulties is to impress upon the debtor class the necessity of being careful and watchful to their interest in attending to the requirements herein proposed ; and this can be done under the present circumstances by the Assistant Collectors and the Mamlatdars during their visits to villages while on duty.

The debtor class also is growing gradually shrewd enough not to be dupes in the hands of their creditors.

8. I have suggested the mode of educating the debtors class in the last paragraph, through the medium of the Revenue officers. But I think it will not be advisable to depend upon them for any help in the direction of having any check on keeping of proper accounts. For it is generally agreed that in the working of the Revenue officers evil, greater than good, is done by the low-paid subordinate officers by availing themselves of the opportunities thus offered to them for making mischief and so the check work must, in one form or another, be left to the agency of Civil Courts.

9. I do not think any good will come out by issuing signed and sealed books from any office.

10. I also think that the registration and licensing of money-lenders will be the least likely to promote the intended result.

I may here take opportunity to suggest that if the system of Village Panchayat is introduced in villages or groups of villages, the very many difficulties connected with the proper working of the conciliators or the settlement of disputes in the villages and keeping of proper check on money-lenders' transaction with agriculturists will be obviated and very many problems connected with the Dekkhan Agriculturists' Relief Act and in some other department of public utility or interest will be solved.

Ratnágiri, dated 16th July 1912.

From—K. H. Kirkire, Esq., First Class Sub-Judge, Ratnágiri ;

To—The District Judge, Ratnágiri.

With reference to your No. 1608, dated 9th July 1912, I have the honour to submit the following report :—

1. To err on the safe side, I am generally in favour of the proposal made by the Hon'ble Mr. S. R. Arthur. I think that the proposal from the words "Every money-lender should keep a separate account in duplicate" up to the words "must be produced at the time of hearing" sufficiently serve the purpose. I am not in favour of the latter part of the proposal, commencing from the words "No evidence should be admissible" to the words "after the expiry of thirty days from the alleged payment"

The Judge should have the discretion as to what weight should be attached to the entries in each particular instance according to the circumstances of each case. The Court will have to consider the sections of the Evidence Act in several peculiar cases, where fraud or undue influence is practised on any party, and there is no reason why extraneous evidence, oral or documentary, should be shut out to rebut any entries in the account.

2. I know that objections may be raised to this system by those who are opposed to the interference of legislation in such private matters and dealings. But in my opinion rules of conduct which are intended to teach people how they should carry on money-lending in a businesslike and methodical way, are highly commendable, though people who are not accustomed to regularity and discipline will raise a loud cry, and be even greatly dissatisfied on account of this educative measure. However, I am confident that both the classes will in the long run be able to settle their disputes with the help of some mediator on the basis of such accounts, and much expense and trouble in getting justice through the dilatory method of Civil Courts will be saved.

3. I think that the system should be applied to all cases, whether the savkar is literate or otherwise. No doubt it would cause some hardship in the case of an illiterate person, whose money-lending business is confined to a few debtors only. Such people form the majority. I do not of course ignore the fact that several people, earning even five or ten thousand rupees a year, do not keep any regular and accurate accounts of their private expenditure. However, I do not think that there would be any serious trouble if illiterate money-lenders have to get their account written and a few entries made per month in the *khatas* of different debtors through some one in their village who can read and write. We see that an ignorant man or woman, who wishes to purchase any property or lend money to another, actually secures every information about stamp and registration and succeeds in getting bonds and deeds written and executed according to law with the help of others. I fail to see why he or she should not be made to make himself or herself acquainted with the new way of doing business. Several ignorant persons have got their money deposited in Savings Banks. There is no reason why they should not willingly concede to keep the same kind of books and spend a few hours per month in properly writing or filling them up.

4. I do not think it advisable that any Government officer should be asked to page and seal these books. This would be an additional burden on the already over-worked officer, be he a talati, a kulkarni, a Mamlatdar or an Assistant Collector. The paging and sealing of books is likely to cause delay to the debtors in getting the loans. The matter should be left to the mutual convenience of the savkar and the ryot. They must be made to understand that they should not be dependent on others, but should manage their affairs by helping one another. If after a fair trial Government notices that there is an abuse of the new system, either by the savkar or by the ryot, Government is at liberty to make the necessary alterations. I see no sufficient reason why these books should be issued from Government officers. This would naturally involve some expense of time and money. It would be a wiser course in my opinion if the principle of the division of labour should be borne in mind and the people be taught to help themselves and also made to understand that they have every right to expect help from Government when any measure, such as for example the system of co-operative credit societies, requires the same. It would be a good plan if responsible Government officers could manage to find sufficient time to inspect these accounts, when they are on tour. Such an inspection, if it is so in the real sense of the term, would operate as a beneficial check on the irregular and unbusinesslike ways of the masses in general.

5. The idea of licensed and registered money-lenders will certainly not be welcome by the public at large. The savkars, whether petty or rich, would feel some moral degradation by such a compulsion. The existence of such a register would be a reasonable ground for the people to think that Government espouses the cause of the agriculturist and distrusts the money-lending class in general. Hardly anything perceptible can be gained by

injuring the sentiment of the creditors. Again, certain necessary rules would have to be passed to give effect to the intentions of Government and to punish the breach of any provisions. I think that the Dekkhan Agriculturists' Relief Act has caused a heavy loss to many savkars and I have grounds to believe that the agriculturists are in several instances found equally guilty of falsehood and dishonesty. Any amendment which is to be aimed at should be enacted in a way so that both the classes should co-operate and help one another, Government only interfering where it is necessary to do so from any disciplinary point of view.

Dápoli, dated 16th July 1912.

From—Shridhar Atmaram Naik, Esq., Sub-Judge, Dápoli;

To—The District Judge, Ratnágiri.

In compliance with your endorsement No. 1608, dated 9th instant, below copy of letter No. 54, dated 29th ultimo, from the Hon'ble Mr. S. R. Arthur, on special duty, I have the honour to report as under:—

The proposals in the said letter were discussed with the pleaders of this Court, all of whom expressed themselves strongly against them.

2. It is true that the taking of accounts under Section 12 of the Dekkhan Agriculturists' Relief Act is at present, in cases where no regular accounts are kept by the creditor, more or less a matter of guess-work, and that the work of the Court would become very easy, if such accounts could be forthcoming. But a proposal to make keeping of accounts by the creditors compulsory is not free from difficulties. The agriculturist-debtor has, as a result of the Dekkhan Agriculturists' Relief Act, lost all his credit with his savkars. It has become extremely difficult for him to obtain a loan on personal security or even on a mortgage of his property, and sales by him of his property are every day becoming more and more common. Restrictions like those proposed, namely, compulsory accounts in duplicate, registration and licensing of money-lenders, etc., would only add to the present difficulties of the agriculturists in the matter of obtaining loans. Besides compulsory accounts would go very hard on illiterate and petty money-lenders. If accounts are made compulsory only in the case of savkars who are literate and who carry on money-lending business on a large scale, it would be difficult to draw a line by legislation between literate and illiterate money-lenders and between money-lenders doing business on a large and a small scale. Moreover, ignorant debtors who are at present unable to protect themselves against fraud on the part of the savkars will be equally unable to protect themselves even under the proposed system of compulsory accounts in duplicate, and if so, no good is likely to result from the system. Of course the Courts will welcome any proposal that reduces their work, and, looked at solely from our point of view, the proposed system has undoubtedly many advantages; but from the point of view of both the debtors and the savkars the system would be not only very difficult to work in practice but of practically no benefit. The relations between the debtors and the creditors have already become much embittered and legislation on the lines proposed will make them worse to the ultimate disadvantage, not of the savkars, who know well how to invest their money profitably, but of the ignorant and needy debtors, who want money badly and know not how to obtain it.

No. 41.

Bombay, dated 21st August 1912.

From—The Honourable Sir Vithaldas D. Thackersey, Kt.;

To—The Honourable Mr. S. R. Arthur, on special duty.

I have the honour to acknowledge the receipt of your Memorandum No. 55, dated 29th June—6th July 1912.

In reply, I have to say that I have no first-hand knowledge of the working of the Act. I am, however, satisfied that the sections you refer to are evaded in practice. Indeed I should have expected that they would be evaded having regard to the illiterate and helpless position of the average Deccan ryot. And even now I am of opinion that not much good will ensure by altering the law as suggested in your letter. I would trust to the spread of education among the ryots and to the expanding influence of the Co-operative Credit Societies movement which is bound to make the savkar in his own interests more equitable in his dealings with the ryots. I may also say that I am unable to agree that honest savkars have disappeared as the result of the working of the Act and that only dishonest persons are to be now found financing the ryots. The savkar although he may not be a philanthropist is not a fool, and we must credit him with sufficient common-sense to do nothing in the nature of killing the goose which lays his golden eggs. However that may be, I am inclined to suggest that we may wait before undertaking further interference with the course of economic life, till the Co-operative Credit Societies have had enough time to make their influence more widely felt in the Presidency, to the whole of which the Act has been now extended.

I enclose for your perusal a memorandum prepared for me by my friend Rao Bahadur Achut Rao Desai who has had experience in administrating the Act, with modifications by the Honourable Lalubhai Samaldas, who has studied the question.

Memorandum prepared by Rao Bahadur Achut Rao Desai with modifications by the Honourable Mr. Lalubhai Samaldas.

With reference to the remarks that Sections 64, 65 and 66 have remained a dead letter in the four districts to which the Act was first applied, I agree with the reasons given in the third paragraph of your letter about the successful evasion of Sections 65 and 66. These reasons are not valid in the case of Section 64 as it requires every person to whom an agriculturist makes a payment in liquidation of a debt to tender him a written receipt whether he demands the same or not. The money-lenders were, therefore, bound to give written receipts whatever the amount paid, and it is difficult to understand why the Courts ignored the omission and failed to inflict the penalty provided in Section 67.

Legislation in advance of the time remains inoperative.

It is the common fate of any legislation which happens to be in advance of the time that it should remain a dead letter. The Act of 1879 conferred on every agriculturist-debtor the right to demand from creditor an annual statement of his own account with him or a pass-book containing his account made up from time to time. The exercise of this right was voluntary and not obligatory, but if it were regularly set in action, the debtor himself would know correctly his own liability. Such an up-to-date statement of account containing entries not in dispute would have helped the Courts and saved a good deal of time, trouble and cost.

But is it not too much to expect a rayat, whose personal credit in the open market is doubtful, and who has to depend on his own savkar for accommodation in respect of his petty recurring wants, to send a challenge, as it were, to him to furnish him with his account? We told the agriculturist, it is true, that it was to his own interest that he should get from his savkar, even at the risk of displeasing him, a statement of account, check it and get free from his grip by paying him off; but we did not place him within reach of means if the offended savkar himself wanted to get rid of his client through the Court or otherwise.

In villages where there are now credit societies established, the savkars have lost their terrors. Elsewhere the hopeless borrower has to look down and wait. I am therefore of opinion that whatever safeguards you may devise, their operation will be entirely governed by the fact whether they are suited to the present conditions of those for whom they are intended.

With reference to the remarks made in paragraph 4 of the letter, that as the Act is worked at present, the taking of history is, in 9 cases out of 10, a pure matter of guess work, that the tendency of the Court is naturally to find a middle course by cutting down the account to some extent, and that this puts a premium on dishonesty.

Results of the working of Sections 12 and 13 as reasons urged for the proposed amendment of the Act.

I have the honour to say that as no statistics are given in support of these remarks it is difficult to express any opinion on the subject in their absence. It appears from the summary of reports of the District Judges on the working of this Act that all Judges do not take the above-mentioned pessimistic view, while some assert that the taking of accounts, etc., are worked out to the benefit of the agriculturists. The state of things about 1894, *i.e.*, sixteen years after the Act of 1879 was introduced, is well described in his speach before the Legislative Council by Sir W. Lee Warner. He said :—

Categorical contradiction of the subject affirmed by Mr. Neill's Commission of 1892.

> " The demoralization of rural societies was predicated as a consequence of the temptation offered by parental legislation to the setting up of false defences * * *. The report of the Commission* confirmed the opinion expressed by those who preceded them, that a load of debt had been taken off the ryot's shoulders without demoralizing him or shaking his credit and without ruining the money-lender. They affirmed the success of the leading provisions of the Act, amongst others, of those for ' going behind the bond ', those for redemption suits and for account, and those for payment of instalment."

Here is an authoritative and positive denial of the alleged demoralization as proceeding from the setting up of false defences. Perhaps what had not occurred until 1894 might have occurred since. Even this does not seem probable. The operation of the Act was originally confined to the Deccan Districts of Poona, Sholápur, Sátára, Ahmednagar and Khándesh. Since 1906 Sections 7, 11 to 21 and Capters V, VI, VII and Section 71-A have been extended to all the other districts of the Presidency. These provisions include Sections 12 and 13, the very sections which are said to possess the harmful tendency of demoralizing the community. It is but reasonable to suppose that Government would in 1906 have omitted them had they known them to be objectionable.

The introduction of the system mentioned in paragraph 5 of your letter will, it is true, have 1 and 2 of the effects referred to in paragraph 6. It will not have much effect as regards the excluding of the mass of false evidence, etc., in greatly reducing the number of suits. Moreover, what we have to see is whether the proposed system will benefit the agriculturist-debtor. I fear to a large number of agriculturists it will not mean any benefit and may mean some harm. The Dekkhan Agriculturists' Relief Act provided for them an elastic procedure by making it the duty of the Court to ' go behind the bond ' even when the liability was admitted by the agriculturist-debtor, but under circumstances making the admission suspicious. We are now providing instead that the account in duplicate kept in the manner prescribed shall be conclusive proof of the matters therein stated. Under the proposed system we declined to admit evidence of payment in cash or kind by the client to money-lender after the expiry of 30 days from the alleged payment. Thus even the benefit of the ordinary rules of evidence is denied to him. In a transaction between two literate persons even when the document is signed and registered it is not treated by law as having the effect of ' conclusive proof ' of the matters therein stated. I attach great importance to the first hypothetical objection mentioned in paragraph 8 of your letter. It is simply to protect the fool against his folly that we are taking the trouble of finding out a workable scheme that will do so; and so long as there is the vast number of illiterate agriculturists in need of money for various purposes that objection cannot be brushed aside as you seem to do in the same paragraph.

The effect of conclusive proof from the agriculturist's standpoint.

---

*The Commission referred to here is that appointed in 1892 with Mr. J. R. Neill as its President.

In paragraph 10 it is suggested that as alternative to making the duplicate accounts 'conclusive proof' they should be given the weight of presumptions such as those prescribed in clause 2 of Section 4 of the Evidence Act, *i.e.*, 'whenever it is directed by this Act that the Court shall presume a fact, it shall regard such fact as proved unless and until it is disproved.'

The effect of 'shall presume.'

Here again the onus of proof will lie on the agriculturist. It was to save him from this position of responsibility as against his more powerful antagonist that it was made the duty of the Court to go behind the bond and investigate into the history of the case under Sections 12 and 13. The importance of these sections can be judged from what is said about them in the Select Committee's report of 1879. It states :—

The importance of Sections 12 and 13.

> "The provisions of the Bill calling for notice are those contained in Sections 12 and 15, commonly described as the sections requiring the Courts 'to go behind the bond', and they are *by far the most important* we have had to consider."

I do not think it necessary to refer to the portion of the debate bearing on these sections. It is sufficient to observe that if 'going behind the bond' is done away with, the agriculturist—I mean one not in name only, such as a Marwadi money-lender becoming an agriculturist by purchasing land, but a real agriculturist, indebted and illiterate one who has neither credit nor means of his own—one who has no friends or relatives to support him with money or advice—such an agriculturist, I think, will be distinctly a loser by the proposed system. May I in this connection quote the opinion of the District Judge of Belgaum from the summary of the reports of the District Judges that the names given to the Court to go behind the bond are entirely beneficent and that in the long run the only result will be to reduce the rate of interest to what is reasonable. Besides if Sections 65 and 66 have remained inoperative simply because those for whom they were intended have failed to take advantage of them, what guarantee is there that those very persons will be exacting enough in regard to the accuracy of the account entries to which we are going to give the effect of 'conclusive proof' or at least that of 'shall presume'? It should not be forgotten that we are incurring serious responsibility by replacing a procedure whose elasticity has produced beneficial results, by a rigid rule under which, in the last resort, the burden of proving his side of the case will rest on the agriculturist-debtor.

As regards the suggestion made in paragraph 13, I think that if the proposed system is eventually adopted it should be left to the choice of the savkar as to whether he should keep his accounts in books paged and sealed and issued from a Government office. In the case of the borrower the use of such books should be made compulsory.

Should the pages of account books be numbered and sealed?

With respect to the proposal made in paragraph 14 about registering and licensing money-lenders, I am strongly of opinion that it is both impolitic and unworkable. It is well known that in such cases recommendations about eligible persons begin at the wrong end. Speculative or dishonest money-lenders will try by hook or crook to get a license. It is besides a serious question whether protection of this kind will be of any benefit to the borrowers from the economic point of view. The licensing system must reduce competition and thereby raise the rates of interest on loans. The next step necessarily will be to limit the interest rates by legislation, a measure which no civilised Government will sanction.

Should the money-lenders be registered and licensed?

I do not think it advisable to have the books of the savkars inspected at stated intervals by Assistant Collectors and Mamlatdars.

Inspection of books of savkars.

The situation is on the whole one which need cause no anxiety. No doubt instead of the four or five districts it is now the whole area of the Presidency that has to be dealt with. The necessity of having to 'go behind the bond' in certain cases may

Concluding remarks.

have caused extra work, but on the other hand extension of the Act has decidedly reduced the number of suits and appeals, and even that of execution proceedings. If the Village Panchayat Bill which it is expected will shortly be introduced in the Council, is passed, it will provide for adjudication of minor suits and hence no addition to the judicial officers will be needed. Even from the point of view of the general tax-payer, therefore, the existing system seems free from objection.

Solution of the present difficulty by the aid of the Co operative Credit Societies.

The organizing of village banks is fast developing. There is not a district in the Presidency proper which has not a Village Co-operative Credit Society within its limits. There are already more than 300 societies, rural and urban, with a total membership of about 30, 00. With the Bombay Central Bank ready to finance, the number of rural societies is bound to increase. Agriculturists or non-agriculturists will have access to loans on much easier terms than the best disposed money-lender is likely to offer. The present problem may therefore be safely left to find its solution in the extended working of the Co-operative Credit Societies Act.

I believe Mr. Desai is mistaken in stating that a system akin to one proposed by you is in force in Bhavnagar and is working satisfactorily. So far as my information goes, there is no such system in force in Bhavnagar. Perhaps Mr. Desai refers to the system of accounts as between the State and the agriculturists, in which case what he says is true, but that has no bearing on the system of accounts between the savkar and the agriculturists.

To summarize, I am of opinion :—

(1) That the amendments proposed will materially undo the object which the framers of the Act XVII of 1879 had in view for giving relief to indebted agriculturists of the illiterate class.

(2) That the immediate effect of the amendment will be the repeal of Sections 12 and 15, revolutionizing the very ground work of the Act.

(3) That it is most inadvisable to give the statements of accounts in duplicate the weight of "conclusive proof" or even the inferior status of such a presumption as to throw the burden proof on the agriculturist-debtor.

(4) That no case is made out for such a far-reaching change in the existing law as that now proposed.

(5) That it is highly inexpedient to introduce the system of lincensing money-lenders.

(6) That the present problem may be safely left to find its solution in the spread of education, in the extended working of the Co-operative Credit Societies Act and of the proposed Village Panchayat Act.

No. 42.

Poona, 25, Napier Road, dated the 28th July 1912.

From—The Honourable Khan Bahadur Nowroji Pestonji Vakil, C.I.E.;

To The Honourable Mr. S. R. Arthur, on special duty, Poona.

With reference to the papers kindly sent by you to me with your endorsement No. 55, dated the 6th instant, regarding system of accounts between savkars and their agriculturist clients for my remarks and suggestions, I beg to inform you that I think the system of duplicate accounts suggested by you in your letter is feasible, provided :—

(1) that the money-lender is only made to keep in his account book a separate and complete account of his dealings with each of his agriculturist clients. But he may keep as many such accounts in one book as suits him, he need not have a separate *book* for each account; only each account therein must be complete in itself; and

(2) that the portion in the proposed system of duplicate accounts which requires each transaction, as it is entered in the account books, to be attested, not only by the signature of the savkar, but by the signature or thumb-impression of the agriculturist as well, is omitted, the circumstances being as follows :—

> If as many separate books of account are required to be kept by the money-lender as he has agriculturist clients, it would entail on him great trouble and expense and involve some risk of their loss also, while if he keeps all his agriculturist clients' accounts in one book only, but each account separate and complete in itself including *all* transactions between the parties, that would just as well serve the purpose in view and save him the trouble and expense and risk of loss involved in keeping so many separate books.
>
> As regards the signature or the thumb-impression required of the agriculturist also at the time of each transaction, I am afraid that would hardly be possible, considering the nature of his occupation; as often, while actually engaged in the work of cultivation, he finds it necessary to send his child, or wife, or other man to the savkar for an emergent want of seeds or money, and if his signature or thumb-impression is required on each such occasion (and such occasions would be many), the delay it would involve would seriously hamper him in his work and might sometimes ruin it, and the savkar, too, on account of the inconvenience the necessity of the agriculturist's signature each time would entail, might not like or think it worth his while to carry on his business under such conditions, and the real sufferer then would, I am afraid, be the poor agriculturist, who, if the money-lender stopped lending him, might thereby be deprived of often his only means of sustenance or cultivation.

Such being the circumstances, I think, if it is made obligatory only on the savkar to sign in the book of the agriculturist each transaction as it takes place and is entered, dispensing with the signature or thumb-impression of the agriculturist, and, on the agriculturist, only to present the book to the savkar for entry each time, that (along with the money-lender's account book kept in the manner stated above with each account separate and complete in itself and forming an exact counterpart of the book kept with the agriculturist), it would be amply sufficient, I think, for all the purposes mentioned in your letter; and further, if the books to be kept with the agriculturists are, as suggested in your letter, paged and sealed and issued from a Government office, that would provide an additional safeguard against subsequent alterations or additions.

Such books, if supplied free or at a nominal cost by Government, might prove popular with the peasants, and if on the first page simple directions are printed in the vernacular to the effect that the book must be presented to the savkar at the time of each transaction for entry and signature, and a warning that, after each transaction and entry, either of payment or repayment, the book should be got examined and read to him by some literate person, and that he would be running a risk of loss if he neglected to do so, it would put him on his guard and considerably enhance the account book's reliability.

If, again, the further check, suggested in your letter, of inspection of the agriculturists' account books by Government officers is provided, it would ensure their being regularly kept up and prevent chances of fraud also. But the inspection should, I think, be confined to the books kept by the agriculturists only. Inspection of the savkar's books is likely to prove very irksome to him and to disincline him to have any dealings with agriculturists, which would cause great hardship to the poor peasants themselves, as the petty money-lender in the village is after all a necessary evil, and, in the interests of the peasant himself, can never be entirely dispensed with, I think.

Duplicate accounts kept in the manner above related may, I think, be safely treated by the courts as a strong presumptive evidence of their correctness, but at the same time, considering the extremely ignorant and often helpless condition of the peasant, it would be safe, I think, to leave it entirely to the discretion of the court to admit other evidence also, where fraud or undue pressure is suspected.

As to registration and license of money-lenders, I think that would hardly do any good, as by limiting the peasants' scope of borrowing, it is likely to lead to combinations among the few licensed money-lenders and exaction of harder terms from the poor agriculturists.

Instances of counter account books kept by the agriculturists and made up at the time of each transaction by the savkars seem to be very few and so, if a system of duplicate accounts with proper safeguards is introduced, it is really likely to do much good, I think, to all concerned. But if the system is introduced, it should be made uniformly obligatory on all money-lenders, I think, whether literate or illiterate, there being probably hardly any of the latter class.

In conclusion, I beg respectfully to add that a further spread of primary education among agriculturists, which our benign Government has been doing its best to promote, is likely considerably to help the smooth working of the proposed system and to mitigate the evils which this system is intended to remedy.

No. 43.

Broach, dated the 2nd—9th August 1912.

From—The Honourable Sardar Rao Bahadur Motilal Chunilal, Broach;

To—The Honourable Mr. S. R. Arthur, on special duty, Poona.

I have the honour to acknowledge receipt of your endorsement No. 55, dated $\frac{29\text{th June}}{6\text{th July}}$ 1912, forwarding copy of your letter No. 54 of the same date, addressed to all Collectors and District Judges for my remarks, and to express my regret that owing to my moving about and the press of work I was not able to attend to it earlier.

2. So far I have noticed the provisions of Chapter IX of the Dekkhan Agriculturists' Relief Act requiring—

(1) that a receipt shall be given to an agriculturist for payment of money in liquidation of a debt (section 64);

(2) that he shall on demand receive from his creditor an up-to-date statement of account (section 65);

(3) that he shall have his account made up from time to time in a pass-book (section 66);

have remained a dead letter; but I have not received any complaint that a receipt has been refused by the creditor; that an up-to-date statement of account was not given on demand and no pass-books are, according to my information, given to the agriculturists by the savkars as required by section 66 of the Dekkhan Agriculturists' Relief Act.

3. I quite believe the evidence of the trustees of the late Rao Bahadur Warud's estate, that though the deceased had dealings with the agriculturists for some thirty-five years to the extent of two to three lakhs, never did a dispute arise between the creditor and debtor, because he evidently appears to have had a high character for honesty.

4. The system is good and would afford security for correct accounts if the agriculturist-debtor is literate, but in the case of the person who is not able to read or write incorrect figures of receipts and payments will be recorded by an unscrupulous money-lender and the pass-book will estop him from disputing the correctness of the transaction, because there will be found his thumb-impression on the entry given at the time the entry is made. He may later on dispute the correctness of the transaction, but what evidence can the poor man produce? He usually goes alone or perhaps with a friend, but when the matter comes up before a court, the money-lender will be able to produce numerically larger number of witnesses to contradict the disputant and obtain a decree all the same.

5. In Gujarát there is a book kept by every money-lender known as *tham khatawai* in which a separate account is kept of each debtor. But loans are also given on bonds. Both are capable of being forged, as will be seen from the following case which had happened in Mehmadabad in the year 1884.

6. I was at that time the Mamlatdar of Mehmadabad in Kaira district exercising powers of a first class Magistrate. A dhed of Sansoli (as I now remember the name of the village) complained that a certain savkar had forged a document purporting that he had obtained a loan of Rs. 100 from the savkar with whom he never had dealings. I issued a search-warrant and his account books and heaps of documents and blank stamped papers were produced before me in pursuance thereof—I was amazed to see :—

(1) that the account books for twenty years past were unbalanced, and that sufficient blank space was kept everywhere for the interpolation of entries ;

(2) that a large number of stamped papers varying in value from two annas to five rupees and purchased at different times during the preceding twenty years were found. I cannot, at this distant date, give the exact total balance of the stamp, but I think it amounted over a hundred rupees. Now, had these papers been not kept for forging documents, they would have been returned to the Collector and their value recovered by the purchaser;

(3) that hundreds of bonds were found in which one or the other of the following defects were noticed :—

(*a*) that the amount paid was not mentioned ;

(*b*) that the signature of the debtor was not put ;

(*c*) that none of them was attested by the witnesses.

On inquiry I learnt that the amount was left blank to be entered later on according to circumstances. If the man against whom the forged document was prepared had any unencumbered land or house, only so much amount was to be entered as would be required to purchase it at the civil courts' auction-sale. That the signature of the debtor was not obtained, because mostly his debtors were illiterate, and therefore his signature and that of the witnesses were made by persons who would willingly give evidence at the time a civil suit was filed, and as the bailiffs know how not to serve the summonses and yet to report to the court that the summonses were served on the defendants, false *ex parte* decrees were obtained.

7. I had also come to know in connection with the disposal of the income-tax appeals that even the savkars with reputation kept four sets of books, *viz*, one for production before the income-tax officer in which many items of profits were omitted ; second, for use in the civil court which contained an account corroborating the suit ; third, a rough account from which the other books were written ; and a fourth which contained correct account of the transactions, but that always remained in the exclusive possession of the money-lender and in his private safe box.

8. I have given only a superficial idea of how false accounts are kept and money-bonds forged. The practice is by no means confined to few of the money-lenders, but is being practiced to this day by apparently respectable persons enjoying high social position, who have by their unscrupulous conduct acquired extensive property and amassed wealth.

9. I think I had, in one of my administration reports as District Deputy Collector of Kaira, made certain suggestions to check these dishonest practices. I cannot after so many years mention what exactly were my proposals, but according to my recollection they were to the effect that no court should recognize in evidence any account or transaction which was not recorded on pucca bound books with printed columns and printed numbers on the pages which Government should keep in stock and sell like general and court-fees stamp at cost price. Not more than one set of account books was to be sold to any person, and if any one wanted a supplementary book owing to the first having been written up, he may be given

one after the Treasury Officer had satisfied himself that the first was filled up and that the last entry therein should be signed by him and a certificate given by him on the supplementary book to the effect that it was Volume II or III, as the case may be, and sold for recording transactions after such and such a date. This arrangement would check the keeping of more than one set of books and make subsequent interpolations of entries impossible. All transactions in the day books should be continuous without any blank space between the transactions of any two dates. To this should be added the system of giving a pass-book as did the late Rao Bahadur Warad of Sholápur to the client, failure to do which should be penalized. This will ensure to the literate client every safeguard against fraud. In regard to loans which the savkars give on bonds, it should be compulsory by law that the payment of the consideration set forth in the bond produced for registration should be made in the office of and in the presence of the Sub-Registrar, who should certify by an endorsement thereon that the consideration was actually paid in his presence. There will, however, be no consideration for payment where a bond is passed after taking account of past transactions. In such cases the Registration Act should be so amended as to make it compulsory on the money-lender to produce all his past accounts before the Sub-Registrar, who should examine them and state in his endorsement of registration the exact amount he finds *from the accounts* to be due to the money-lender, and if that is found to be less than the amount mentioned in the bond, the civil court should grant a decree only to the extent, but if the accounts show a larger balance then only the amount mentioned in the bond should be awarded. I do not, of course, pretend to think that this will completely eradicate the evil it is sought to remedy but is likely to lessen it.

10. I think that considerable improvement in the character of the money-lenders will take place if the civil court procedure is amended. It is with regret that I have to mention my conviction that in most of the *ex parte* decrees the summonses never reach the defendants. As Mamlatdar I used to receive for execution decrees passed against the agriculturists, and I did not hear a few complaints from the judgment-debtors that they did not know of the suit or the decree until then. The time for appeal had expired in all cases and the poor people suffered for the corruption of the bailiffs. Even now as conciliator, I do not get the defendants, though repeated postponements are given. The summonses are returned served and I have to accept the service as having been made, though I often doubt that it has been. It may be said that non-attendance of the defendant is no justification to hold that the bailiffs did not serve the summons. The defendant may not care to take the trouble to attend the court if he does not dispute the claim. My rejoinder is that the very fact that the debtor has not liquidated his debt or made any payment in liquidation thereof is sufficient to show his inability to pay at once, so, if he received the notice of the suit, he would surely attend the court to apply for instalments. I would respectfully very strongly urge the abolition of the system of serving through the bailiffs and try the postal service through the village patels and talatis and compulsory attendance of the defendants.

11. There are many other classes, such as petty artizans, weavers, and traders, who deserve similar protection, and I am strongly of opinion that whatever changes in the law may be made should apply equally to all—I would venture to suggest the repeal of the Dekkhan Agriculturists' Relief Act altogether, as I believe that instead of fulfilling the good intentions of Government of affording relief to the ignorant cultivators, it has done incalculable harm which has passed all remedy. In Gujarát lots of lands which were mortgaged have permanently passed out of the hands of the family. As soon as the Dekkhan Agriculturists' Relief Act was made applicable to the Gujarát districts, the savkars were shrewd enough to get sale-deeds passed by inducing the cultivators to believe that it would not alter their status, as they would be reconveyed as soon as the debtors were able to pay the amounts. I do not believe that any reconveyance for which no written agreement is made will ever be effected, and I have not learnt of a single transaction in which a counter-agreement to reconvey the lands has been given by any money-lender.

12. I think that the only possible chance of teaching honesty is mass education. As compared to the conditions which prevailed twenty years ago,

there is an immense improvement at present. There are fewer illiterates, and I have reasons to hope that the next census will show a considerable reduction of illiterates, as the masses have now come to recognize the necessity and advantages of education, and the rates at which the elementary education is making progress at present is far greater as compared to what it was ten years ago. The organization of Co-operative Credit Societies which are now springing up in all directions will afford facility to the agriculturists and petty traders to obtain loans at moderate rate of interest and a clear and honest account of the transactions. Five years more will bring about a great improvement in the intelligence of the people and their own ability to safeguard themselves against fraud.

No. 44.

From—The Honourable Mr. F. G. Pratt, I.C.S., Settlement Commissioner and Director of Land Records, Poona;

To—The Honourable Mr. S. R. Arthur, I.C.S., on special duty.

In answer to your No. 55 of 26th July 1912, I have the honour to send you a brief note with remarks on your proposals.

2. I regret that I cannot take a more optimistic view of them and that I am unable to offer any constructive suggestion on that branch of the subject upon which you have invited my views. I do not think that it will be possible by legislation on these lines to make the accounts of money-lenders more reliable, or to diminish the difficulty now felt by courts in ascertaining the correct facts or to strengthen the hands of the illiterate borrower.

Note.

In my humble opinion the system will prove unworkable and of no practical use.

2. I do not believe that the client will keep his pass-book. He will be quite content to leave it in his savkar's keeping. The savkar will take care that the two copies tally, and I cannot see that duplication under such circumstances would in the least increase the credibility of the account. And it is notorious that even now written attestations and admissions carry but little weight.

3. The provision suggested in the last sentence of your paragraph 5 would, I think, be disastrous to the illiterate borrower.

4. Even on the assumption that attested entries are to be accepted as conclusive, I am unable to see that any of the advantages claimed for the system in your paragraph 6 would obviously or immediately follow.

The savkar's accounts may conform to all the rules and yet be impossible to accept at their face value: and conformity with the rules will afford no criterion of who is an honest money-lender and who is not. And while it is possible that a good deal of false evidence would be included from the courts, it seems equally possible that a good deal of true evidence would also be excluded, oral evidence put forward by borrowers to rebut false claims based on immaculate accounts.

5. If even a presumption of correctness is to be attached to the accounts, how are the courts going to work the clause in section 13, which runs "Notwithstanding any statement or settlement of account or any contract purporting to close previous dealings and create a new obligation?" Such a measure would throw the burden of proof upon the weaker vessel whose protection is the whole *raison d'être* of the Act.

6. In any case I do not think it would be possible to demand that accounts should be kept in standard pattern account books issued from a Government press, and that no lender should be entitled to recover his loan, unless he had at

the time of issue of the loan filled up entries in such books and got them attested. The practical difficulties would be insuperable, and the result of any attempt to enforce such a system might be a considerable curtailment of credit.

7. Inspection of accounts by Assistant Collectors or Mamlatdars and registration of money-lenders both appear to me to be impossible.

8. In paragraph 8 of your letter you say that it is a one-sided arrangement that one party alone should be bound by his attestation. It is quite true that our legislation in this matter being protective legislation is one-sided. But we have to redress the balance of another very one-sided arrangement, *viz.*, the relations between a shrewd and often unscrupulous money-lender and an ignorant and illiterate peasant who is urgently in need of money. I do not think that our legislation puts a premium on dishonesty. It attempts, not without success, to check dishonesty by suspending the ordinary law of contract when it finds that the two parties to a contract are very unequally matched and that the stronger has taken an unfair advantage of the necessities of the weaker. No mechanical arrangements, such as the suggested system of accounts, will alter the relations between the two parties or will put them upon a footing of equality.

9. For these reasons I would deprecate any legislation on these lines.

F. G. PRATT,
Settlement Commissioner and Director of Land Records.

No. 45.

Camp Aundh, dated the 27th July 1912.

From—Khan Bahadur Jacob B. Israel, B.A., State Karbhari, Aundh ;

To—The Honourable Mr. S. R. Arthur, I.C.S., on special duty.

I have been asked to give my opinion on the subject referred to in your No. 54, dated 29th June 1912. It relates to Chapter IX of the Dekkhan Agriculturists' Relief Act.

2. The agriculturist in India has, for ages past, been and will continue for ages to come to be in need of loans for various purposes connected with his profession and personal comforts.

3. Before the advent of the British Government, the dealings between the savkars and the agriculturist-debtors were uncontrolled. The savkar's demands knew no bounds and were never questioned, the result being that the agriculturists were almost in a state of seldom resorting simply to bolting away when the burden became too much for them to bear.

4. With the advent of the British Government all matters began to change, attention was drawn to this condition and it became necessary to liberate the agriculturist from serfdom and to establish a class of farmers free from the humiliation of practical slavery. Legislation was thus introduced in addition to education and other civilization, and whatever the past defects or virtues thereof may be, I dare to assert from my general impressions (I have not had the advantages of a reference to statistics on the subject) that the results have been as follows :—

(1) The class of ancestral bankers which used to suck the blood out of the farmers has almost died out,

(2) Aid from Government in times of need and distress has made the farmers somewhat independent of savkars.

(3) The farmers, owing to a sense of security that now pervades about them and also owing to the spread of general education and knowledge acquired by free communication with trade centres like Bombay, have become wary and cautious and in a great measure better able to protect their own interests than what they were before.

(4) The farmers have, owing to the opening up of immense trade and business, various ways open to them materially to supplement their means and have thus become rather self-reliant.

(5) A rather clever class of agriculturists now exists side by side with the ignorant to advise against the rapacity of a savkar.

(6) A class of clever and parsimonious agriculturists has now evolved which is ready to advance small amount to needy brother agriculturists.

(7) Last of all, owing to constant communication with large centres, the wife of a farmer is not what she used to be. She is better able to guard the interests of the household than before, and I dare say instances will not be lacking of women having by good memory successfully thwarted the greed of the savkar.

(8) I do not mean to say that these results are so general and widespread as to obviate all need for legislation on the subject. I only mean that the seed is sown and the tree has taken root and we have to wait till it bears fruit when the need for legislation will disappear and there can be free trade between savkars and farmers without the fear of the interests of both being injured by ignorance and fraud.

9. It remains now to be seen what precautions are necessary to be taken by legislation until the goal stated above is reached, in order to guard both the ignorant farmer and the honest savkar against fraud, keeping at the same time in view the progressive circumstances above described, which require a commencement at least of a certain amount of freedom of action between the farmers and agriculturists, with a view gradually to have as large a capital as possible safely invested for the general advancement of agriculture.

10. From such experience as I possess, I am ready to say that under the present circumstances when the savkars and debtor-agriculturists stand on equal footing and do honest business, towards which state of things matters are gradually verging, no difficulty arises and business continues smoothly much to the advantage of both the parties. Resort is in such cases rarely had to the civil courts. But there is a large class of savkars yet in existence who like to defraud the agriculturists and of agriculturists who like to cheat the savkar. It is in the cases of such people that the greatest difficulty arises in the civil courts about dispensing conscientious justice, owing to the absence of a reliable history of accounts. The justice dispensed thus becomes of a very haphazard character, and no one makes a secret of the remark prevailing in private society that the civil court justice in such matters is in favour of such as are able to play their tricks best.

11. To prevent this state of things and the consequent ruin to society, the means already provided having failed, I am prepared to say that your plan to have a system established of keeping a double set of accounts duly signed, one set remaining with the savkar and the other with the debtor, is admirably suited. The effects mentioned in paragraph 6 of your letter will certainly thereby be secured.

12. This system has the guarantee of previous experience of smooth working having been started by some people of their own accord. I was rather surprised yesterday to find it in practically the same form as suggested by you already in existence at Aundh amongst a few of the savkars, who say that it has worked between them and their debtors most satisfactorily and has obviated the necessity of going to the civil court. I append a statement of the savkars whom I found to be following it.

13. It will not be hard to follow the system. That it is practicable is evidenced by the fact that some people do actually follow it.

14. Both honest savkars and agriculturists cannot object to the system, as the situation is in no way likely to be changed thereby for them. They have anyhow to keep accounts, and it is not in their interest to thwart attempts to make the accounts systematic and sure. The dishonest will certainly object, but they do not deserve to be heeded, and the legislature must provide means to prevent dishonesty.

15. I do not mean to assert that the system will prevent all chances of fraud, as the dishonest will find means to play tricks. No system, however, clever can lay claim absolutely to prevent fraud and obviate all chances of dishonesty. What is to be aimed at is to establish a system whereby the chances of fraud are reduced to a minimum, and no system other than the one proposed is calculated in my opinion so efficiently to prevent fraudulent transactions.

16. If the system is introduced I would not recommend the issue of books at all from Government offices. I would leave the people to make the books for themselves. I strongly deprecate any attempts, now that an era of progress has commenced, to take too much care of such interests of the people. That will stifle progress towards self-reliance and a rather undesirable condition of dependence on officers of Government for safety from fraud will be established.

17. The question is raised whether the double set of accounts should be taken as conclusive proof, or whether they should be regarded as presumptive evidence. I am of opinion that the measure cannot be effective, unless the accounts are made conclusive proof. As soon as they are made presumptive evidence, a field is opened for the dishonest mind to devise clever loopholes, the result being a reversion to the same evil as is intended to eradicate. The civil courts will get flooded with a mass of unreliable oral evidence as at present and the judgments will become as haphazard as they have ever been.

18. The question further is to what class of people the system should be made applicable. A point may be raised that in case the system is made generally applicable, a large class of people, who cannot read and write, but who are sufficiently clever to collect capital and invest it, will find it difficult to carry the system out. It may also be pointed out that ignorant debtors will not be able to read the account entries and satisfy themselves that they are correct. I think the difficulty is imaginary. There is no lack of men in these days to write or read accounts for such people, either free or on payment of a comparatively trifling amount.

19. In case the system is made applicable to literate persons only, there will arise enormous difficulties to draw a line of distinction between illiterate and literate people, and numerous literate persons will try to pass off defective accounts as genuine on the pretended ground of illiteracy. Here then arises occasion for the civil courts being flooded with a mass of useless and undistinguishable matter.

20. I may describe the situation as follows :—

> In the existing system there is 99 per cent. of disputed matter in which truth and falsehood are chemically compounded and are thus perfectly undistinguishable. According to the system proposed if made generally applicable, there will be 99 per cent. of truth with about 1 per cent. of mechanical mixture of truth and falsehood rather easily distinguishable.

21. One who cannot get anyone to write for him will not risk his money. Such persons will be too few to deserve attention in consideration of the immense advantages derivable from the system. A debtor, who cannot get anyone to read the entries for him, can occasionally get the Mamlatdar at least to read them, in case the village kulkarni or writer does not help him.

22. I am on the whole of opinion that for the system to be effective and productive of the results wished for, it will have to be made general in application and free from any distinctive character.

23. About the suggestion to license savkars I feel myself quite opposed. There is a number of people who at any time acquire small amounts which they can invest by loaning them to friends and neighbours. It is practically impossible for such people to apply for and obtain licenses and an enormous capital, which is likely to prove of use to agricultural advancement, will either have to remain unemployed or will get wasted and invested in unsafe undertakings. In addition there will arise a class of bankers practically monopolising the trade, the debtors being compelled to pay ruinous rates of interest, the account entries being kept in such manner as may appear quite reasonable. For instance, a licensed savkar can when he finds a needy agriculturist easily make him acknowledge a debt of

Rs. 200 when he actually pays Rs. 100 deducting at the same time interest at the rate of 12 per cent. For an actual amount of Rs. 88 received in cash a debt of Rs. 200 will thus be acknowledged. The savkar can easily enter this amount in his and the debtor's books showing interest at 6 per cent. A civil court will never object to grant interest at this rate with the capital already stealthily doubled. The debtor will have to submit as there will be no competition and he cannot go elsewhere.

24. I recommend the trade being allowed to remain as free as possible, as restrictions like licensing the savkars are likely more to injure than to improve the prospects of agriculturists.

25. Of a somewhat similar nature and effect will be the supervision or examination of the accounts by village, taluka or district officers. People wish for a certain amount of privacy to be observed as regards money-lending and borrowing dealings. There is a question of credit and discredit in the matter, and with the introduction of Government supervision the charm of privacy of the affair will be lost. A large number of people will thus be scared away from the transactions much to the injury both of the savkars and the rayats.

26. The chances of fraud will be few, and for the prevention of such, it is not desirable to establish a system of supervision by Government officers of private transactions. There will be immense pains without commensurate gain in addition to the risk of the privacy of the people being encroached upon. Let such cases, as arise out of complaints made, be carefully investigated and adequately met with and there will be enough of control. I solicit attention here to my remark in paragraph 16 above, and beg to state that it is highly necessary for Government at present to avoid falling into the position of an indulgent parent.

27. On the whole I am of opinion that the account system proposed should be introduced, the civil courts not recognizing any other accounts. There should be no trammels of the supervision of Government officers, nor of a licensing system. There should be a careful examination and adequate decision of cases of fraud arising on complaints made. No more interference seems necessary. There will thus be a wholesome control exercised by legislation, which is at present needed with sufficient latitude for progress towards a free trade and a state of self-reliance for protection against fraud.

28. I beg in the end to be excused for defects in my opinions offered. I have already confessed to you that the nature of the service I have hitherto rendered did not afford me sufficient opportunities precisely to study Indian agricultural life in the Deccan as affected by the Dekkhan Agriculturists' Relief Act.

29. My views, however, have the support of the Aundh public, a short statement of some of whom I beg to submit herewith. The signatories are experienced State officers, ordinary rayats, savkars, and others fit to express an opinion on the subject.

(Submitted through the Chief of Aundh.)

Aundh, dated the 27th July 1912.

Forwarded with compliments.

2. The undersigned fully endorses the views expressed above by the Karbhari.

(Signed) B. PANDIT PRATINIDHI,
Chief of Aundh.

No. 46.

From

G. L. MACGREGOR, Esq., I. C. S.,
Provincial Superintendent of Census,
Bombay Presidency, Poona;

To

THE HONOURABLE MR. S. R. ARTHUR,
on Special Duty, Poona.

Poona, 29th July 1912.

Sir,

I have the honour to submit the following remarks on your letter No. 54, dated 29th June 1912.

2. There is no doubt that the present Dekkhan Agriculturists' Relief Act is not working satisfactorily. I have seen very little of its working, as most of my service has been in districts to which it had not been extended, but the suggested reforms seem to strike at the root of the difficulties.

3. The Act being intended to protect illiterate agriculturists the first thing to do is to get a fairer system of accounts. As you have pointed out, the sávkár keeps accounts, the indebted rayat generally does not. The sávkár's accounts, moreover, can be easily manipulated, blank pages being always available in a native account book. Therefore properly sealed and paged books issued by Government will be a great advance. The duplicate set of accounts thrusts on the debtor, if he is willing to avail himself of it, the chance of checking his creditor's accounts. If he is too lazy or too careless to see that his own copy of the ledger is written up he must expect to find himself let in, if he happens to be dealing with a dishonest sávkár. In revenue collections in the days of the 'Rayat's Receipt Book' the book generally reposed in the village accountant's *daftar*, from which it was not produced till an inspecting officer came his rounds. It may be urged that the illiterate debtor will allow his copy of the accounts to remain with the sávkár in the same way and will not care to get these written up, but the circumstances are not strictly similar. The kulkarni was a collector of money which did not belong to him and was supposed to be disinterested, whereas the sávkár will be the person directly interested in recovering his debts, and it is unlikely that the debtor would thus throw temptation in the way of his creditor. It might also hapen that the debtor on the occasion of a repayment might not have his book with him, but both this case and the highly hypothetical one mentioned above might be met by the sávkár keeping a receipt book similar to the kulkarni's receipt book with counterfoil and receipt slip, which could be accepted in the same way as revenue collections are now made. This would not be much extra trouble, transactions being not numerous. Rayats admit the excellence of the *háth-pávti* system in revenue matters and their only complaint is that the paper is too flimsy and the receipts get lost. But the debtor keeps the counterpart of his deed and it cannot be too much for him to put away the receipt with the deed when he gets home.

4. It may be argued that the villages in which there are illiterate money-lenders and no one knowing how to write, both debtor and creditor would be in difficulties, but such illiterate money-lenders generally lend to men they know, and there is not the same difficulty in recovering the debt. Anyone who is prepared to go into the money-lending business would live in a large village, where literate persons could be found. I do not think it is necessary to discriminate between the small money-lender and the man who does a large business. If the small man wishes to take advantage of the Act he should keep

accounts. If he is in too small a way he would in any case not come into Court, and the proposals would not affect him. Therefore I would make the presentation of a copy of the account together with the plaint compulsory on all money-lenders.

5. The country does not seem to be ready yet for the complete exclusion of oral evidence. But it must be remembered that the Act has only recently been extended to the Presidency outside the four districts, and that the people have not everywhere learnt that there is an advantage to be got from the production of a mass of oral evidence. But the accounts might be treated as strong presumptive evidence of the correctness of the claim.

6. The registration of money-lenders would be a difficult measure to introduce. Is a man who lends his neighbour Rs. 30 to buy a plough-bullock, a money-lender? It would also be an unpopular measure, might restrict credit and make money tighter.

7. Also I would deprecate inspection of accounts. It would be as good without comparison of both parties' accounts as well as the bringing out of documents which are better kept locked away. And it would be difficult to do it at all thoroughly unless some sort of register were kept, and sporadic inspection would be a waste of energy. There is enough inspection already; some of the villages on a main road are inspected to death.

I have the honour to be,

Sir,

Your most obedient servant,

G. L. MacGREGOR,

Provincial Superintendent of Census, Poona.

No. 47.

Rao Bahadur K. J. Agashe, District Deputy Collector (retired).

Note.

It is exceedingly difficult to frame a definition of the term 'Agriculturist.' The word itself signifies that an agriculturist is a person who earns his livelihood mainly by agriculture just as a merchant or trader signifies a person who earns his living mainly by trade or a beggar signifies a person who maintains himself mainly by begging. But obviously the meaning of the term agriculturist which naturally attaches to it though correct was considered insufficient to bring about the results aimed at by the legislature. The word 'agriculturist' is therefore defined in the Dekkhan Agriculturists' Relief Act and the meaning is somewhat restricted. The definition however as it stands is too wide as it apparently includes cases which require absolutely no special treatment, and excludes cases where protection on the other hand is absolutely necessary. Suppose the case of a person well able to read and write, a thorough man of the world having an income of Rs. 5,000 from agriculture on which he is mainly or principally dependent; but who is deeply in debt, the result perhaps of his own folly and improvidence. Suppose also the case of an indigent farmer whose income from agriculture is only Rs. 25 which he supplements by labour—non-agricultural—which yields him Rs. 75 making his total income Rs. 100 a year. Now in the first case the foolish and improvident agriculturist will surely get the benefit of the Dekkhan Agriculturists' Relief Act and he will surely laugh in his sleeves for being patted by law for his improvidence, while in the second case the hardworking and honest farmer whom dire necessity alone has driven to the door of a greedy and unscrupulous money-lender will be denied those benefits simply because his principal source of income is not derived from agriculture. This is not proper. No help should be given where none is required and there should be no relief where there is no real distress. The Dekkhan Agriculturists' Relief Act professes to give relief to distressed agriculturists. Evidently therefore the Act ought to provide relief only to really distressed agriculturists. But who is distressed and who is not? In determining this question I am of opinion that our criterion ought to be the amount of an agriculturist's yearly income, irrespective of the fact whether or no the major portion of the income is derived from agriculture. In other words, poverty and consequent indebtedness should be the test. A person enjoying a total yearly income of Rs. 500 would neither be in affluent nor in distressed circumstances. Persons enjoying an income below Rs. 500 per annum should be considered poor and distressed for the purposes of the Act. I would therefore place the limit of Rs. 500 on the total yearly income of an agriculturist to whom the Act should extend its protection.

Definition of an agriculturist.

Another question incidentally arises, *viz.*, who is to be called an agriculturist?

Under the present definition a landlord tilling his soil with the help of tenants is called an agriculturist. A tenant is no doubt an agriculturist but I do not know how his landlord also becomes one. If we continue to call landlords agriculturists we shall have to include even very rich persons who are in no way connected with agriculture under the term. The words 'by tenants' in the present definition therefore should be omitted.

For the words 'wholly or principally' I would substitute 'wholly or partly' and would put a certain limit to the income up to which relief is to be extended as explained above.

I would define an agriculturist to be a 'person who actually occupies land assessed at Rs. 100 and below and who cultivates the land by himself or his servants provided his total yearly income from other sources if any does not exceed Rs. 200.

Explanation.—This would include persons who ordinarily and personally engage in agricultural labour.'

The words *actually occupies* are used with a view to exclude mortgagee who are not in actual occupation of the land.

The assessment limit proposed will save the Courts an amount of inquiry into the income of the agriculturist. Experience has shown that land assessed at Rs. 100 will yield a net minimum income of Rs. 300.

It happens in some cases that an agriculturist derives very little income from agriculture and has therefore to supplement his earnings by some other means not connected with agriculture. He is an agriculturist however all the same. In order to give such a person the benefit of the Act the proviso as to the income from other sources has been introduced.

So far for the definition of 'agriculturist.'

As regards the dealings between an agriculturist-debtor and his creditor, I cannot guarantee that they are always straightforward and honest. Sometimes the debtor is to blame and sometimes the creditor. At present some of the creditors do keep accounts and I believe they are reliable; but such cases are few. It must be remembered however that I am talking of honest savkars. There are many who keep false accounts and produce them in Court unhesitatingly. On the other hand there are many debtors who urge false payments and indulge in false pretences. To put a stop to all such proceedings the only remedy is a good system of accounts which should be rigorously insisted on. The introduction of such a system will not be disliked by honest creditors and debtors though dishonest persons may not like it. The accounts need not be very elaborate. A ledger account opened in the name of the debtor and a counterfoil receipt form will I think serve our purpose. Each entry in the ledger account shall bear the signature and thumb-impression of the debtor in token of his having seen and understood it. When payment whether in kind or money is made, the creditor shall immediately give a receipt for the same to the debtor in the prescribed form. The counterfoil part of the receipt to be retained by the creditor shall also bear the thumb-impression of the debtor in token of his having got the receipt. In order that there should be no doubt as to whether a receipt was actually given or not, thumb-impression shall also be taken on the perforated part of the book in order that comparison of the two impressions might be easy when a question arises. The receipt books should be printed under the authority of Government, each book containing a stated number of pages. The Mamlatdar should keep a sufficient stock of these books for sale to the public and the savkars should obtain them from the Mamlatdar for a fixed price. In case a savkar refuses to pass any receipt or puts off doing so, the debtor shall within a month lodge a written complaint with the Mamlatdar who will immediately issue a notice calling upon the creditor to show cause why he should not be fined. The Mamlatdar will if satisfied of the payment being made compel the creditor to pass the necessary receipt. If on the other hand the Mamlatdar finds that the complaint is groundless he should fine the complainant.

'These accounts should be held conclusive and the Court should not look into the past history of any transaction.'

This system would at least minimise the evil though it might not completely eradicate it.

No. 48.

Opinion of Mr. N. D. Khandalawala regarding the question of keeping duplicate accounts, etc.

In regard to the new proposals made as to keeping accounts in duplicate, etc., I am of the following opinion :—

(1) All money-lenders, whether literate or illiterate, should be made to keep separate accounts in writing of their transactions with agriculturists.

(2) The money-lender should each time that he advances money or other things to an agriculturist, enter the same in his account book, and take the thumb-impression of the agriculturist thereon.

In the same manner whenever a payment is made by an agriculturist the same should be entered by the creditor in his account book, and the thumb-impression of the debtor should be taken underneath it.

Under each thumb-impression the name of the person who makes the impression should be written.

(3) Each time that money is lent or other commodity is given by a creditor to an agriculturist, a memorandum on a piece of paper or on a small book should be made by the creditor, and should be signed by the creditor or a thumb-impression of his be made and given to the debtor.

In the same way whenever a payment is made by the debtor a memorandum on a piece of paper or on a booklet should be made by the creditor and signed or thumb-marked and given to the debtor.

(4) If the creditor fails to give the debtor such a memorandum he should be liable to be fined for failing to supply the memorandum to the debtor.

(5) The debtor should in every case be made to affix his thumb-mark even if he knew to write. His signature should also be taken when he knew to write.

(6) Copies of the accounts should be filed by the creditor along with each plaint.

(7) The accounts and memos supplied to debtors should not be treated as conclusive proof but only as strong presumptive evidence.

(8) I do not think that any other and more stringent provisions should be made in this respect.

No. 49.

Sátára, dated the 5th August 1912.

From—The Honourable Mr. R. P. Karandikar;

To—The Honourable Mr. S. R. Arthur, I.C.S., on special duty under the Dekkhan Agriculturists' Relief Act (Poona).

As desired in your letter No. 80, dated the 3rd instant, I have the honour, in connection with your suggestions about "maintenance of accounts by savkars," to offer for consideration the few observations which run as follows.

2. You are right in observing that the important provisions of Chapter IX have remained practically a dead letter. Remarks appearing in the Special Judge's Annual Report since 1881 confirm this view.

3. I have watched the working of the Act since its birth, and I have not come across any appreciable number of instances where justice has suffered owing to absence of the enforcement of the law as regards *receipts* by savkars.

4. The reason is not far to seek. Under compulsory regulation enjoyed by the Dekkhan Agriculturists' Relief Act of documents of dealings with agriculturists and under the express wording of section 70 requiring all transactions affecting immovable property to be in writing and of course registered under the Act, there have in the past been very few what may be called hand-debts. Undoubtedly there have been barters and small money dealings connected with every day transactions, but it is obvious, neither the law nor your present suggestion contemplates interfering with the same. And it would be futile to expect writing in such small though numerous transactions as, for instance, borrowals of provisions from a village Bania, purchase of cloth or purchase of oil or oilcakes from village oil-mongers, though these when accumulated often compel the borrowers to seek the help of a money-lender. Cash payments for assessment are often supplied by neighbours especially the instalments in January, when corn is not quite convenient or ripe to sell. These are soon repaid in March by sale of cattle or the yield of the lands and do not possess any record whatsoever. It would be next to impossible to impose the duty to keep the accounts. Any such imposition does decidedly interfere with the every day very very small but necessary transactions.

5. The remaining transactions include a large proportion of land mortgages, mostly accompanied with possession; sometimes this possession means *Kabulayats*

Since the operation of the Act for the first few years middle class of money-lenders who advanced borrowed capital dwindled to an enormous extent, their place being taken up by agriculturist money-lenders who always find it to their advantage to be put into possession. It is clear that when an agriculturist money-lender, *i.e.*, mortgagee, thus obtains possession, the receipt by him of the yield of the mortgaged property, though receipt of payment legally speaking as effective as cash for purposes of account, is hardly noticed as such either by the mortgagee or the mortgagor but is certain to be taken into account by the Court when taking accounts. Now such enjoyment of profits was not contemplated by the law as one for which any duly passed receipt could be claimed by the debtor. These circumstances to my mind account for the Chapter IX remaining a dead letter during the long period of 32 years from 1879. I am not induced to accept the suggestion that it was either through ignorance or turpitude the debtor did not urge for a receipt, but that the debtor and the creditor in early days after the transaction have full confidence of each other, and that there was, owing to the usufruct of the land having to remain with the creditor, no occasion to demand a receipt.

6. As observed above, nowadays, money-lenders such as are ordinarily wanted by an agriculturist's temporary needs, do belong to the agriculturists class themselves, and it is almost universal experience that neither of them knows sufficient reading and writing. If we require the parties to monetary transactions hereafter we have to entrust the entries in the books to mercenary writers, careless or interested, and the mere " thumbing " by any of the parties would mean nothing, unless the writer is examined in case of a dispute. What sound assistance can be rendered to a Judge deciding a case or even to a Magistrate holding the creditor penally responsible for not giving a proper receipt I will not venture to imagine.

7. The result is that cash repayments by agriculturists in respect of mortgage transactions are very few, and for those few the proposed stringency is more than requisite. To make the working complete we shall have to insist on the mortgagee's receipting the annual usufruct of the land—a requisition rarely conducive to smooth and economic working in villages. In the case of savkars, you find accounts properly and regularly kept. It however rests with the Courts when the judicial exigencies of the case require it, even to ignore these too, and in such case I have very grave doubts if the remedy suggested may itself be the disorder from the agriculturists' point of view. The debtors will have to find money for writing or even stamping the receipt, and since it is notorious they have to do that in obtaining tagai loans or even accepting " Bhatta " from Civil Courts as witnesses and acknowledging it and making their mark on the *Takid*, I do not think our proposed accounts and counterfoils can afford to be an exception. Practical working, I am afraid, might not prove the utility of the suggestion which as well as the law proceed on the assumption that the parties know the three " R's ".

8. The argument that the Courts have to proceed in matters of history of transactions on guess-work, does not in my humble judgment support the proposal. The scissors of enquiry into the past history of debts have long effected their purpose in the four districts during the past 30 years, and more and equally ineffective will be the proposal in other districts to which the Act has been extended, since any *post facto* direction can hardly help the agriculturist-debtor in respect of past transactions. It can only help future transactions and possibly the cancelment of the hithertofore requisite registration may give a field for experiment, since, owing to transactions for less than Rs. 100 being hereafter permissible without any writing to evidence the same, receipts would perhaps be largely in demand; but it is plain that when the principal transaction need not be evidenced by a writing it would look anomalous to exact " receipt " for wiping off the same. Perhaps when a document in writing unregistered has been in existence to evidence the loan, a receipt might be made compulsory. But I am inclined to think that in course of time the whole village registration will have to find place on the statute book and then the receipts would also have to be registered.

9. The above is sufficient to indicate why I am not in favour of surmising the feasibility of the proposal. If I were to further pursue the subject I may be

permitted to say that the 30 days' time does not fit in with the ordinary right extended by the General Limitation Act which provides six months, a much longer period for a judgment-debtor to claim certifying by the creditor of any payment or adjustment. The Legislature has, with express purpose of extricating agriculturist judgment-debtors out of the meshes of procedure of limitation, enabled the Courts to admit oral evidence on such adjustments. Our proposal therefore need not be more stringent, simply for the fact that the opportunity for such evidence arrives in the case of our proposal before and not after judgment. Virtually I cannot see the difference in effect.

10. As you have rightly observed in paragraph 9 of your reference, the present average agriculturist is by no means in the hands of the savkar to the same extent as the previous generation of agriculturists. I will take the liberty to limit this observation to the four districts in which the Act is said by some to have spent itself. However with the progress in easy communication, your observation may undoubtedly apply to some agriculturists outside the four districts also. I am not in a position to see any advantage in encouraging more prosecutions for "not giving receipts or not keeping accounts" as I feel the object of the Dekkhan Agriculturists' Relief Act is protection and not encouragement to aggression such as will add to the already existing complication in village.

11. Licensing of creditors will not, I am afraid, commend itself to Government. The experiment was tried in connection with the license-tax which was abandoned in favour of the income-tax for, I believe, among other reasons making the procedure more popular but less objectionable. Such a step may revive old associations and cause the whole scheme to be misunderstood. Licenses will have to be granted all the year round but the sale is sure to be more honoured in its breach than in strict observance. I do not think in the present state of the country it is expedient to force neighbours to turn themselves into creditors simply because they have to oblige friends occasionally but only temporarily, unless we make our rules about licenses so elaborate that their overreaching itself is its disease.

12. You observe in paragraph 12 that the Commission will of course be glad to have any alternative suggestions and naturally I am encouraged to take up this suggestion. But I must say that I fully realise that no suggestion can be free from possible or probable drawbacks. I must confess that I look forward with ardour to the Village Punchayat Law though I must admit it cannot be panacea for all possible evils. But I am persuaded to hope that with the vigilance which a village Punchayat can locally lend to even monetary transactions in the village, the Punchayats can exercise an efficient control over dealings in their respective jurisdictions. As yet I have not had the benefit of an adequate knowledge of the possible provisions of the Bill under preparation and I would solicit permission to revert to my concrete suggestion in a few days.

13. I have to apologise both for the length of this letter as also for the plain speaking, which your kindness has encouraged, in which I have explained why the contemplated reform may not prove beneficial. In the present illiterate condition of the masses, specially the agriculturists, many a desirable reform has to be deferred and I regret this very desirable step must also be deferred though not quite indefinitely.

No. 50.

Poona, dated the 9th August 1912.

From—W. C. Shepherd, Esq., B.A., I.C.S.;

To—The Honourable Mr. S. R. Arthur, I.C.S., on special duty.

I have the honour to submit the following notes—for what they may be worth, in reply to your No. 55 of 5th August.

2. At present there is no law to compel a savkar to keep accounts, and the provisions of sections 64, 65 and 66 of the Act, which were intended to enable the debtor to demand an account have proved in practice to be valueless for the

reasons given in your paragraph 3. I therefore think that it is clearly a move in the right direction to order that a savkar who comes into Court must produce accounts. And the system of duplicate accounts would have this great advantage that, besides enabling the debtor to know at any time how he stood, properly attested accounts which tallied completely would, if produced by both parties in Court, have considerable value. But in practice, I think, it is probable that the savkar would be careful to enter, and have attested, advances made by him, but would not be nearly so scrupulous about entering repayments. And if it be urged that the debtor would insist on his repayments being entered I would reply that under the present law he can insist on a statement of accounts, but admittedly does not do so, and that there is no reason to suppose that if he cannot or at any rate does not in practice demand a yearly statement of account, he will be able or willing to demand something much more elaborate and troublesome. The probability seems to me to be that though we may order the savkar to keep duplicate accounts he will not as a rule do so, and the debtor will not attempt to compel him. No doubt the honest savkar will comply with the law so far as he conveniently can. But it will often happen that the debtor forgets to bring his book or loses it. The proposed reforms are directed against the dishonest or grasping savkar, and the person who most needs protection is the reckless borrower. Now the reckless and improvident cultivator is notoriously ready to agree to anything provided he gets his money. He will agree to the entry in the savkar's acounts of a sum larger than the actual advance and will agree not to demand a duplicate account. The savkar will come into Court with his accounts, the debtor will say that he was not given a duplicate. The savkar will say the debtor is a liar and has lost or is concealing his book, and we shall have to fall back on the oral evidence or, more properly speaking, perjury, which it is desirable to avoid. And if, as may very possibly happen, the borrower in order to get his money has to agree to and attest a false entry in his own duplicate book, he will be even worse off.

In the case of Rao Bahadur Warud, I fancy that investigation would probably show that the reason why he never had to go to Court was that he treated his debtors fairly and considerately and was careful about the solvency of the people to whom he lent money. For the keeping of duplicate accounts will not prevent a debtor from being unable to pay, and if this should happen Rao Bahadur Warud or any one else would have to go to Court or write off the debt.

Having little actual knowledge of the kind of cases that come into Court I write with the greatest diffidence, but I fear it is probable that in most instances we should find only one set of accounts produced and that so untrustworthy that it could not be regarded by the Courts with any confidence. Even if the duplicate accounts properly attested were to be produced I would hesitate to regard them as even presumptive evidence, since entries of repayments could so easily be omitted. And as I said before there would often be no difficulty in obtaining the debtor's consent to false entries. To regard them as conclusive proof would, as many of the gentlemen consulted by you have pointed out, be to place the debtor in a far worse position than he is now.

But after all, the value of these objections is doubtful. It may very well happen that the cultivator is in the majority of cases sufficiently shrewd to insist upon his duplicate account. In any case he will have the right to insist upon it and it will be his own fault if he does not. The Court will always have some account to go upon, the value of which experience will show. It may turn out to be worth a great deal. Under your proposed scheme the duty of furnishing an account to the debtor is definitely imposed on the savkar and this is a long step in the right direction. I venture therefore to support strongly the proposal to insist upon duplicate accounts.

I would not make any distinction between literate and illiterate savkars, because of the practical difficulty of proving whether a man is illiterate or not. I fear that the result of making such a distinction would be an alarming lowering of the standard of literacy among the wealthier villagers. I would have much preferred not to insist upon accounts except where the loans, or some of them, are secured. This would confine the proposed provisions mainly to professional money-lenders, and avoid the risk of inconveniencing unreasonably people who

lend small sums of money to needy acquaintances or friends and of putting difficulties in the way of those short term loans, which are, I believe, numerous, when the money is wanted urgently and is often repaid in a very short time. One of the main objects of the Dekkhan Agriculturists' Relief Act is, I understand, to prevent the passing of the cultivator's land into the hands of a non-cultivating class, and therefore the transactions with which we are chiefly concerned are of the nature of mortgages. In the case of unsecured loans the debtor would be protected by section 22 against losing his land, and it would be practically impossible for him to lose moveable property of value. Usually he would not have any worth mentioning, and if he had he could always, as those who have to collect land revenue know well, make a temporary distribution of articles of value among his more solvent relatives and friends. But I confess that I cannot see how to get over this difficulty; that in many cases a secured loan is the sequel to a number of unsecured ones. I am not prepared to suggest a way out, but it might be possible to exclude loans of a small amount, when made not oftener than twice in a prescribed period, which should be sufficiently long to prevent the law being evaded by splitting up a loan of say Rs. 50 into 5 loans of Rs. 10.

I would not insist on attestation by thumb-impressions. My experience of them is that they are of little value unless taken by a trained man.

I would not insist on accounts being in any particular form (except that they should be in a language known to the debtor). If the creditor's and debtor's books are both kept and regularly attested there would seem to be little need of paged and sealed books, and if only one account is kept, as I fear would frequently happen, they would be of little use. I would deprecate any more State interference than is absolutely necessary with the private business affairs of the people. If paged and sealed books were obligatory they would have to be obtained from a Mamlatdar's office which would often be at a distance from the residence of the savkar; they might not always be available on demand; and whatever orders on the subject were passed they would almost certainly cost more than their nominal price.

I do not think registration of money-lenders would be possible even were it desirable, which I do not think it is, in a country where almost everyone who has money is a money-lender to some extent.

It often occurs to me that it is very difficult for us, who cannot remember what it was to be illiterate, to realise the mental attitude of a man to whom a document is merely a collection of unmeaning scratches on paper. It must be very hard for him to understand the real importance of the written word. And this no legislation can teach him. The only practical remedy is to make him literate.

No. 51.

Camp Poona, dated the 7th September 1912.

From—The Honourable Meherban Narayanrav Govind Ghorpade, Chief of Ichalkaranji;

To—The Honourable Mr. S. R. Arthur, on special duty.

I have the honour to acknowledge receipt of your endorsement No. 102, dated the 4th instant, forwarding, for remarks, copy of your letter No. 52, dated 29th June 1912, and beg to make the following remarks thereon.

The Dekkhan Agriculturists' Relief Act was introduced to remove so far as may be practicable the difficulties under which the agriculturists in the Deccan were found to be labouring under in their transactions with the money-lenders. The Act has neither been intended nor could it be possible for it to remove or even remedy the two principal causes of the indebtedness of the agriculturists, *viz.*, their poverty and ignorance. No measure which leaves either of these causes untouched can satisfactorily solve this difficult problem of agrarian indebtedness and whatever measure may be devised with this object would be only palliatives.

As however we are now concerned only with bringing the savkar and the debtor on one level in their legal relations it has to be seen how it can best be done.

Sections 64, 65 and 66 which provide for the granting of a receipt by the savkar to the agriculturist and the keeping of regular accounts by savkar have been found to be ineffective for these are only enabling sections and they can only help those that help themselves.

The measure suggested in paragraph 5 of compelling the savkar to keep duplicate accounts and to make them conclusive evidence of the transactions of the savkars would certainly exclude a mass of false evidence from courts but it will not give the cultivator any better protection than he possesses under the present law. I am therefore of opinion that keeping accounts should be made compulsory on the savkars and the account books should be supplied by Government and they should be treated as presumptive evidence of the transactions as it will give to the cultivator an opportunity of showing that he has been overreached by the savkar. I am also of opinion that no distinction should be made between literate and illiterate savkars and the measure should be made applicable to all savkars alike.

I am further of opinion that this measure alone would not be of much use and it would be necessary to devise means by which the agriculturists will be able to get loans on easy rates of interest from honest savkars. I would therefore suggest that instead of introducing a system of registration and licenses of money-lenders some selected savkars should be given licenses to do money-lending business with agriculturists on condition that they agree to advance loans to agriculturists and charge from them interest at rates varying between 9 and 12 per cent. They should be given facilities similar to those lately given to the Co-operative Credit Societies and the provisions of the Dekkhan Agriculturists' Act should not apply to their transactions with the agriculturists. They should be provided with duplicate account books paged, sealed and issued from Government office and their accounts which must be written in these books should be inspected by the Assistant Collectors and Mamlatdars every three or six months. It may be worth the while of Government to assist these selected savkars with loans* on easy rates of interest. If proper care is taken in selecting individuals who are to be given these facilities I presume the agriculturists will get loans on easy rates of interest and there would be no hitch in their dealings with the savkars. They will work on the same lines on which the Co-operative Credit Societies are now working and will supplement the good work that these Societies are now doing. It will not do simply to control the savkar in his business for whatever control may be put by legislation could be easily got round by the consent of the agriculturist who would be forced to go to the savkar against his own wish. The better policy would be to select such men as would inspire the confidence of the agriculturists.

*(Either from Government revenue or from some respectable banks at the suggestion of Government).

Another suggestion which I would like to make is that a private institution on the lines of Walterkrit Rajasthan Sabha should be started under the auspices of High Government Officers to encourage frugality on the part of agriculturists. If the credit of the rayat is raised and if provision is made for supplying him with cheap capital it would give him an inducement to run into debt more deeply unless there are some checks on his spending capacity either coming from within or without.

No. 52.

Kárwár, dated 26th July 1912.

From—G. Monteath, Esq., B.A., I.C.S., Acting Collector of Kánara;

To—The Honourable Mr. S. R. Arthur, I.C.S., on special duty.

I have the honour to reply to your letter No. 54, dated $\frac{\text{June 19th}}{\text{July 3rd}}$ 1912.

2. On this subject I consulted Rao Bahadurs Gangolli and Yennemadi, the former a retired First Class Sub-Judge, who has officiated in many districts, and the latter, who retired only recently, a Deputy Collector of long and varied experience.

3. Neither of these gentlemen is favourably disposed toward the proposed system of accounts.

4. In the first place, it was objected that the claimant in a suit under the Act is already in practice always bound to produce his accounts. It is true that these accounts are not required to be endorsed by the client, but it was asked what is likely to be the real value of an endorsement consisting of the thumb-impression of an ignorant and illiterate client, taken by the savkar who claims from him? This objection is partly answered by you in your letter, but apart from any question of the money-lender's honesty, the fact has to be given some consideration that to take thumb-impressions well enough to render them reliable as evidence demands a certain amount of skill not to be acquired without teaching and practice. Is it feasible to make it compulsory for money-lenders to acquire the requisite degree of skill?

5. Again the directions contemplated to be given by the Court are rendered unnecessary in the opinion of the two gentlemen consulted by the provisions of section 34 of the Evidence Act, if they are not to some extent at variance with that section. I personally think they are consistent with it.

6. It was mentioned, though the fact scarcely seems to be an argument either for or against the proposals, that savkars in a large way of business are often non-resident, and that a non-resident savkar may be a very honest man, but may have and often has dishonest agents (munims).

7. You ask in paragraph 8 of your letter whether a system which puts a premium on dishonesty is to be maintained in order to protect the fool from the results of his folly. The question was raised whether the whole Act was not framed with the principal object of protecting the fool in his relations with the money-lender. Apart from that question, the introduction of the proposed system of duplicate accounts appears unlikely to bring us much further toward the object desired than would the application of Chapter IX of the Act as it stands, and, for much the same reasons as you observe, have rendered the provisions of that chapter a dead letter where it has been applied. The present system forces the Courts, as you show in paragraph 4 of your letter, to resort more often than not to conjecture in taking the history of transactions between money-lender and debtor. The probability however is that the really needy agriculturist would continue with the proposed system of accounts to let the savkar claim more than his due, and that not so much because the former is a fool as because he is in want of ready money and the savkar is in a position to make his own terms. On the whole unsatisfactory as are the results of the present methods of dealing with claims, it is unlikely that a system which would apparently rather weaken than strengthen the position of the needy and illiterate borrower—that is the average class who ex-hypothesi require protection—would improve matters. One result of the Act has been to make it more difficult for the small cultivator to get money from the savkar, and in order to get it he has to consent to harder terms—including the acknowledgment of a larger amount of principal than was actually received by him. The proposed system of accounts while it does not go to the root of the causes that have produced this state of things, seems likely to make the position of this class of debtor worse than it is at present; and it seems to require further consideration whether, in the circumstances just noticed, it would in fact necessarily put a premium on honesty on the part of the money-lender.

8. Paragraph 9 of your letter appears to contain an argument against the necessity of undertaking further measures in the interest of the agriculturist generally. As one illustration of the second sentence in it it was mentioned—and I believe it is the case—that section 10-A of the Act, where it has been employed, has resulted in the repudiation of *bona fide* sales made at the time voluntarily and for their own convenience by agriculturist-defendants on the ground that they were not real sales—the defendants in such cases of course taking advantage of the chance of getting back the land for nothing. That is an instance of putting a premium on dishonesty.

9. I think the above arguments merit consideration, but any opinion of my own is bound to be *a priori*, and must be discounted by the fact that I have no experience of districts in which the Act is really an important factor. Here where there are practically no professional money-lenders, and few of those who lend money are in anything but a small way of business, what is required is to let the ordinary cultivator get money without difficulty on reasonable terms, and to let the lender get a reasonable return on his outlay. The Act so far as it has been applied has worked directly contrary to these objects, and no modification of the present provisions as regards accounts is likely to improve matters.

10. If the system be introduced, I suppose it would be necessary to make it an amendment of Chapter IX of the Act. I should in that case on the considerations set forth in this letter prefer to let the accounts be presumptive evidence only; and to introduce the system cautiously in one district only. But I incline to think it would be better to introduce Chapter IX as it stands—it can do no harm, and if its provisions are explained to cultivators sufficiently assiduously it may do good. According to Chapter IX of course the accounts prescribed by it are presumptive evidence. I do not see how one can in practice distinguish between literate and illiterate money-lenders. It is a weak point in the proposed system.

11. *Paragraph 14 of your letter.*—I think interference to the extent suggested undesirable. Among other objections it would tend to make it still more difficult than it is at present for the cultivator to obtain small loans.

12. *Paragraph 16.*—I do not think one can argue from Rao Bahadur Warud to the small money-lender—in this district generally of the same class as the borrower. A man in a large way of business must keep accurate account, and probably a considerable proportion of Rao Bahadur Warud's clients were his own tenants.

No. 53.

Kárwár, dated the 18th July 1912.

From—C. V. Vernon, Esq., B.A., I.C.S., District Judge of Kánara;

To—The Honourable Mr. Arthur, on special duty.

With reference to your No. 54, dated 29th June 1912, I have the honour to make the following remarks:—

I. The suggestion that such attested entries should be conclusive proof of the accounts is opposed to the policy of the Act, which is to protect the fool (or illiterate debtor) from the consequences of his folly. Such accounts would certainly be signed without inquiry by the debtor in need of a further loan.

The Act is based on the belief that money-lenders as a class take advantage of the illiteracy of the cultivator. A measure which would secure the dishonest equally with the honest money-lender is quite opposed to the policy of the Act. If the debtor be really "just as ready to overreach the money-lender as the latter to overreach him" and equally competent to do so, then the time has come to repeal the Act.

II. A rebuttable presumption follows from the fact of the acknowledgment.

III. The majority of cultivators are unable to sign their names. Their thumb-prints will not be satisfactorily taken by money-lenders. Experience shows that even in Government offices they are often taken in a very careless manner.

IV. Apparently the suggestion that the debtor must take action within 30 days of an alleged payment means that he must apply to a Court within that time. In the vast majority of cases he will certainly neglect to do so.

V. It has already been suggested that the onus of proving consideration should be definitely placed on the shoulders of the money-lender. This means that he must keep accounts. A presumption will necessarily be drawn

from their absence. The question of their trustworthiness is a question of fact, and it would be most unsafe to enact any presumption of law on the point.

VI. The whole Act necessarily places a premium of dishonesty. The remedy was held to be justified by the serious nature of the disease. There is a rayatwari settlement also in Madras. A comparison of Madras with Bombay conditions would probably be useful, if, as I understand, no similar Relief Act has been enacted for the Madras Presidency.

VII. I have consulted three Sub-Judges and all the pleaders of the Court. All are agreed that the suggestions made are impracticable, though they approve of the application of Chapter IX, on the ground that it will at least place a weapon, to which he is fairly entitled in the hands of the debtor. I am informed by pleaders of cases in which their cultivator clients have complained that money-lenders refused to give receipts. I am of opinion that Chapter IX should be applied to the whole Presidency.

VIII. The case of Rao Bahadur Mallappa Warad is not a good precedent. As a big millowner he followed strict business methods, and any Court would have accepted his accounts. Their accuracy in no way depended on any attestation by the debtor. It depended solely on the absolute trustworthiness of the money-lender.

IX. I have served for many years in Gujarát and never heard of any system of accounts such as that suggested. The experience of a Native State would not be of much use in regard to such a question. Gujarát Banias do settle accounts with their clients every three years and take acknowledgments, but such settlements are quite untrustworthy.

No. 54.

Government House, Karáchi, dated the 19th August 1912.

From—W. H. Lucas, Esq., Commissioner in Sind;

To—The Honourable Mr. S. R. Arthur, I.C.S., on special duty.

With reference to endorsement No. 55, dated the 29th June—5th July 1912, from the Honourable Mr. Arthur, the Commissioner in Sind has the honour to state that he agrees with the unanimous opinion of the district officers that the proposals contained in paragraph 5 of letter No. 54, dated the 29th June—5th July 1912, to the address of all the Collectors and District Judges, are entirely unsuited to the conditions of Sind, and if introduced into this province would render the condition of the agriculturist even worse than it is at present.

2. In Sind almost every Bania shopkeeper has some kind of money-lending business, and in many cases is himself illiterate. The accounts, if kept at all, are kept in the Hindu-Sindhi character—a character of which there are numerous varieties in different parts of the province and which is often intelligible only in the locality in which it is used. Consequently the illiterate Mahomedan agriculturist hardly ever knows to what he is affixing his signature or thumb-impression, though he is generally willing to sign anything in order to raise money. Moreover the agriculturists in Sind as a class could not be expected to preserve their copy of the duplicate accounts, as has been abundantly proved by their inveterate slackness in preserving the rayats' receipt book of assessment (Village form 12). Thus so far as the protection of the rayat is concerned the introduction of a duplicate system of accounts would be quite ineffectual while the extra complications introduced by the system would operate entirely to the advantage of the Bania; and as has just been shown the fact that many of the Banias themselves are illiterate would render the universal introduction of the system an impossibility.

3. The proposal to license money-lenders is entirely opposed to the habits and conditions of people in Sind, and is both undesirable and impracticable; undesirable because the license fee would tend to raise the rate of interest and would be generally prejudicial to the interests of agriculturists, and impracticable because people would not cease to take on credit articles of food and other necessaries of life from the village shopkeeper, be he licensed or not. Further,

such an attempt to compel the people to abandon the customs which are ingrained in them, would result in certain failure, and while achieving absolutely no useful result, would arouse an entirely unnecessary feeling of resentment.

No. 55.

Karáchi, dated the 29th July 1912.

From—E. M. Pratt, Esq., I.C.S., Judicial Commissioner of Sind;

To—The Honourable Mr. S. R. Arthur, on special duty, Bijápur.

In reply to your letter No. 55 of the 6th July 1912, I have the honour to state that the system of duplicate accounts may prove satisfactory in cases where both sides are literate and have confidence in each other.

2. These conditions are, however, rarely fulfilled and in the great majority of cases the result would be that the duplicate accounts would not tally; there would be forgeries on both sides and in this contest the Bania is pretty sure to be top dog. The system is, however, too elaborate to work in practice particularly in Sind where most of the Banias are themselves illiterate and get their accounts made up from time to time by paid scribes. The result, I feel sure, would be that no accounts would ever be kept at all and that the rayat would have to sign a bond or promissory note for everything that he borrows.

3. The proposal to exclude oral evidence as to the accounts would, if given effect to, be a great hardship on the agriculturist. It is diametrically opposed to the policy of the recent amendment of the Act in section 10-A. Moreover what is the Court to do if the two "duplicates" do not tally?

4. It is objected that Government should not legislate to protect a fool from his folly—but I would submit that that observation is a condemnation of the whole Act—for that is in truth the whole purpose of the Act and the very reason why it is so unworkable.

5. I think, however, that something might be made of the proposal to recognize no loan to an agriculturist as valid unless made by a licensed money-lender—for this would be a check on dishonest usurers. I doubt, however, if this scheme falls within purview of the Commission.

6. I enclose an interesting report made by Mr. Tirithdas Choithram, Subordinate Judge, Hála.

Tando Adam, dated the 23rd July 1912.

From—Tirithdas Choithram, Esq., B.A., LL.B., Sub-Judge, Hála;

To—The Registrar, Court of the Judicial Commissioner of Sind.

With reference to your endorsement No. A.—1101, dated the 20th July 1912, I have the honour to forward a copy of my report on the same matter to the District Judge, Hyderabad.

The Joint Sub-Judge endorses the views expressed in the report.

Tando Adam, dated the 16th July 1912.

From—Tirithdas Choithram, Esq., B.A, LL.B., Sub-Judge, Hála;

To—The District Judge, Hyderabad (Sind).

With reference to your endorsement No. 1637, dated the 12th instant, I have the honour to report as under:—

Chapter IX of the Dekkhan Agriculturists' Relief Act is not in force in Sind, and as it has apparently failed in the districts where it has been in force for 32 years, I do not think it requires any more comment.

In Sind the following modes of dealing are in vogue between money-lenders and agriculturists :—

1. Credit accounts for petty items of foodstuffs and other sundries or cash supplied to the debtor and repayments which are generally in kind.

2. Bonds.

3. Accounts of expenses incurred by the creditor or partner and the produce enjoyed by him, in cases where he is in possession as a mortgagee or partner of arable land. These occur mostly in Naushahro and Lárkána.

4. Kabalas (contracts).

The subterfuges ordinarily employed with respect to each of them are :—

1. Accounts—

To include the traditional interest of 19½ or 25 per cent. in each item as it is taken.

To charge a high price for the article, to credit repayments in kind at low rates, to show a part of the high interest as petty items of goods supplied below the true account.

To keep a number of bundies and to carry the account from one to another with acknowledgments of balances in the bundies where it is brought forward, so that it becomes easy to sue on the last bundi and to suppress the previous ones.

To write up a cash item for a balance and show it falsely as marked by the debtor and get two attestations which are never difficult to obtain.

To write up small and false accounts with false acknowledgments as above for debts which are due in some other manner.

2. Bonds—

To get a bond for a balance of account or other previous dealings and to show the consideration as cash.

To get a bond before paying any consideration and to let the debtor draw gradually on it.

3. Expense and produce accounts—

To exaggerate expenses and undervalue the produce in quantity and price.

4. Kabalas—

To lend money on kabalas (written contracts) whereby the debtor agrees to deliver a certain quantity of cotton-pods or other commodity at a low rate, which is often half the ordinary rate, and receives the debt as full consideration in advance. To write up a false kabala for a debt due on account or otherwise, as the easiest way of proving the debt and avoiding the Court's interference.

The object of these subterfuges generally is to secure the traditional high interest and prevent the Court's interference and to circumvent the debtor's dishonesty. If it is a case of enjoyment of produce in shares, the debtor would steal as much produce as he can. If it is a case of an unsigned small accounts or some other debt which cannot be proved with ease, the debtor in many cases thinks nothing of refusing to pay, and the creditor cooks up an acknowledgment with his mark and two attestations. An average hari is unwilling to give one his dues, and is prone to stealing, partly owing to his thriftless poverty and partly on account of his dishonesty. The money-lender takes him as he is, humours him and adopts his own way of dealing with him. This state of things has become somewhat aggravated by the Dekkhan Agriculturists' Relief Act. The debtor has become more contumacious and dishonest, and the creditor has adopted subterfuges to meet him and the Court. Thus the dishonesty of each reacts upon that of the debtor, and the result is the present unsatisfactory basis of the peasant's credit.

I have stated in detail the usual mode of dealing between money-lenders and peasants and the subterfuges ordinarily employed by the former, so that it may appear at a glance what good the proposed scheme of making the money-lender keep duplicate accounts and get each item signed and marked with a thumb-impression can be expected to make, and also on what lines the action should be taken. Many of the tricks enumerated above and perhaps some others can still

be employed, and the debtor would be under the additional disadvantage of having to meet the evidence of thumb-impression, which would be practically conclusive even if the proposal to make the accounts only presumptive evidence is adopted.

Moreover the system proposed is, I fear, much too elaborate. A debtor may require a trifle worth a pice or two and there would have to be four signatures or thumb-impressions over it in the duplicate accounts; and if he happens to come again after half an hour for something else, the same process would have to be gone through. A money-lender has often his clients dispersed over long distances, and sometimes supplies cloth or money to them in their houses or at their Nars (persian wheels). He often goes on rounds over threshing floors and receives repayments in kind here and there, and enters them in the bundi at leisure at his shop after settling the price with the debtor when he turns up. He will think it a great inconvenience to have to carry about with him the thumb-impression apparatus and a lot of his debtors' accounts. My firm belief is that the practice of lending on accounts will simply be dropped in a vast majority of cases. They would find it easier for instance to get a bond for a sum, which the debtor would be likely to draw in a season and which would be estimated beforehand, and then let the debtor draw gradually against it, for which they would keep accounts in private books. This is done even now. My opinion thus is that the proposed system would not be generally adopted, and that wherever it is taken up it would do little good to the peasant though the Court's work would be so far reduced.

It will appear from what I have pointed out above that the money-lender's anxiety is to retain his usual rate of interests at 19½ or 25 per cent. according to locality. Though this was adopted not as a measure of risk and compensation for lending the money but as a matter of custom, as many other things are done in this country, it is now considered really to represent the money-lenders' risk in the transaction, with the present difficulties of recovery combined with the usual inability to pay and dishonesty of the peasant. This rate of interest the money-lender, in my opinion, has not so far lost. It is only a small percentage of his transactions that he brings to Court, and in those that he adjusts outside he charges his usual interest. Out of those that do come to Court only a few reach the stage of re-adjustment under section 13 of the Dekkhan Agriculturists' Relief Act; and in these too I suspect that he manages by clever manipulation to get his full interest. Even if he does not the costs of the suit thrown on the debtor would make it as good for him as if he had paid the full sum outside. Thus it would seem that the Dekkhan Agriculturists' Relief Act has done no good in the shape of reduction of claims, nor is the proposed system likely to do so. The only thing that need be done at present is to make an alteration in the definition of "signature" so that it may not include a mark except perhaps in the case of persons who have no hands to put a thumb-impression. A very large use is made of marks on acknowledgments, bonds and kabalas, and it is generally believed that they are false in too many cases. Where the money-lenders do not keep regular roznamas and khariras, their accounts have practically no probative value and they have to prove them mostly by means of acknowledgments. If therefore a thumb-impression is substituted for a mark, a very large amount of fraud and false evidence would be prevented.

If the proposed system is introduced, I would not have the accounts to be conclusive proof. It is not only a few fools that would suffer and may, therefore, be ignored, but in the very fact of special legislation there is a presupposition involved that the whole class of peasants are incapable of protecting themselves. Practically the evidence of accounts kept on such a system would no doubt be conclusive, but in cases where there is clear proof against them, it would be a pity if the Court's hands are tied down against giving relief. Recently Rule 2, Order 21, Civil Procedure Code, and section 92 of the Evidence Act were excluded from application to agriculturists on the same principle.

If the system is introduced, it should be made applicable to all money-lenders alike, literate or illiterate. There are hardly any who cannot write, but if there is an exemption made in their favour it may afford a loophole for fraud. With such a system, that of registration and licenses may also well be tried; but from both the system of accounts and licenses I would exempt the zamindars who have

to lend to their haris. They have often no regular place of business and sometimes they cannot write, and they would feel it an indignity and hardship. The system of accounts can be made optional in their case.

The books of accounts should be issued from a Government office in case the system is adopted. Such a copy in the possession of the debtor is likely to appeal to him more than an ordinary bundi, and he would preserve it better. The money-lender would also have less freedom to commit frauds in such books than in his own. He may for instance induce the debtor to return his pass book at the end of the season, and give him a fresh one showing the last balance as cash. He would then open a new account in his own book, but it would be easier to trace the prior account in the authorized books than in ordinary bundis.

No. 56.

Court of the Judicial Commissioner of Sind, Karáchi, dated the 5th August 1912.

My dear Arthur,

In reply to your letter of 30th ultimo, I think the proposed system of duplicate accounts of dealings between savkars and agriculturists would be excellent if it were only workable in practice. But I am afraid it would prove quite impracticable in the great majority of cases and would in any case result in a large amount of fabricated evidence, which the courts would have to accept as genuine.

The difficulties in the way of working such a system have no doubt been fully presented in the reports you have received on the subject, and I do not think I need mention or elaborate them. Even in the case of rayats' receipt books, where there is a village officer to make this duplicate entries and Government officers to inspect and see that the duty is properly carried out, there is reason to suppose that the check on misappropriation and cheating is very little. (This view has at any rate been endorsed for Sind by the Commissioner, himself, see paragraph 3 of his No. 353, dated 26th March 1902, to Government in the Revenue Department. Paragraph 13 of the same letter mentions another difficulty in the case of Sind, *viz.*, that creditors and debtors have a different written character.)

The fact that you will be going back on one of the principles underlying the Dekkhan Agriculturists' Relief Act, *viz.*, the admissibility of oral to contradict documentary evidence, even when contained in a bond or other contract, is also a consideration which must be given some weight.

I do not understand your proposed condition that no evidence of payment in cash or kind by client to money-lender should be admitted after the expiry of thirty days from the alleged payment. The question whether such payment had been made or not could not possibly be tried in court within the period you mention; and if you are to allow any such evidence at all, I do not see why the debtor should be debarred from adducing it merely because the creditor sues him after any particular period. (If the proposal has reference to section 71 of the Dekkhan Agriculturists' Relief Act and Article 174 of the Limitation Act, 1908, it will only cover payments made *under a decree.*)

With regard to paragraph 10 of your letter No. 54, I think it would, in the circumstances, be unsafe to enact that such accounts should even be treated as "presumptive evidence". The probabilities are, as mentioned above, that there will be a lot of fabricated evidence and the weight to be attached to any particular account entries is best left to the court to determine under the ordinary rules of evidence. In this connection I append an extract from a report of Mr. Vazirmal Utamsing, Subordinate Judge of Shikárpur, which states that the proposed system of duplicate accounts has in fact been voluntarily adopted by money-lenders in that district, but apparently not with satisfactory results.

I am still of opinion that it should be made compulsory for professional money-lenders (or those lending more than a specified sum a year), whether literate or illiterate, to keep accounts, etc., as suggested in my evidence; and I agree with you that the system of duplicate accounts is desirable and should be

encouraged as far as possible. But the difficulties and objections in the way of its general adoption, in my opinion, render the proposals in paragraphs 5 and 10 of your letter No. 54 impracticable.

Yours sincerely,
C. G. H. FAWCETT.

Extract from the report of Mr. Vazirmal Utamsing, Subordinate Judge, Shikárpur.

With reference to your endorsement No. 110, dated the 20th instant, I have the honour to report that the system of keeping duplicate account books in the manner proposed will in my opinion be of no practical benefit.

2. In transactions between money-lenders and agriculturists, courts very rarely feel any difficulty where the money-lender is a trader and keeps regular accounts and the agriculturist is a zamindar (landholder) as distinguished from a *hari* (cultivator). The difficulty arises where the money-lender is a village shopkeeper and the borrower is an illiterate Kurmi. Where such borrower can write his own signature, the difficulty is very much minimized. In view of the difficulty of proving their claim, the illiterate *hari* and the village money-lender have in most cases already adopted the system of duplicate account books. The money-lender enters in his own hand all the advances made to and all payments made by the *hari*. But when the question comes to the court, the *hari* rarely produces his own book and relies upon the denial of the account or on the denial of the possession of his book. Where he does produce his own book, it is found most often to contain entries of more payments by him, which on evidence he is found to have got made by third person, enemies or rivals of the money-lender.

3. If such books were made to bear the attestation of thumb-marks no better result will follow. In the first place, unless a thumb-mark is taken by a person having some experience of taking the impression, and with a specially-prepared ink the mark will be simply an indistinguishable black spot leading to no conclusion. In the second place, as you are aware, most of the accounts are in the name of the *haris*, but as a matter of fact the items contained in them represent provisions (rice, flour, ghee, dal), wearing apparel, and other necessaries of life advanced to the *haris*' female folk, who keep the house when their husbands, sons or brothers, are working in the field. It is impossible in such cases to take the *hari's* thumb-impression every time a pice worth thing is advanced to his female, who must prepare his meal and carry it to the field a mile or two away.

No. 57.

Mirpurkhás, dated the 12th August 1912.

From—M. Webb, Esq., I.C.S., Deputy Commissioner, Thar and Párkar;

To—The Honourable Mr. S. R. Arthur, I.C.S., on special duty.

In reply to your letter No. 54, dated the 29th June—5th July 1912, I have the honour to state that neither the proposal to insist on money-lenders keeping a duplicate set of accounts nor that for the registration of money-lenders appears to me feasible.

2. The first proposal has for its object the protection of both money-lender and debtor; but in the result, I believe, it will be found merely to put the debtor more firmly in the clutch of the money-lender.

In Sind, at any rate, the Mahomedan who wants money is willing to sign or admit anything in order to get it. Without pretending to any knowledge of the practice of the civil courts, I may say that as manager, I find the proportion of cases very large in which I have to accept oral evidence in variation of a man's written deed. Even if this were not so, the money-lender in Sind could and

would make false or misleading entries in his duplicate account with the same ease and freedom with which he does so in his ordinary account books; for his accounts are invariably written in a script of Bania-Sindhi, which hardly anybody but a bania can read—certainly not one zamindar in a thousand; and a bania could obtain the thumb-mark or signature of his client to entries of the purport of which he was totally ignorant. If such accounts were accepted as conclusive proof against the debtor, the way would be open to the grossest frauds, of which many banias would be only too ready to avail themselves and which it would be almost impossible to prove. The reason for this dishonesty does not lie wholly or even chiefly in the difficulties set by legislation in the way of the bania in recovering his just dues; it is to be found in the whole rotten system of money-lending as it prevails in Sind. On the one hand, is the money-lender prepared to lend to anybody on practically no security; on the other, the large class of people who live in the future without making any provision for it—who borrow merely in the hope that Providence will provide the means of repaying, with the strong probability that Providence will not. Under the circumstances, money-lending becomes the purest gamble, and it is hardly to be wondered at that the persons engaged in it on both sides are inclined to load the dice.

3. On the whole, the best ccurse seems to be that taken in the Dekkhan Act—to lay down merely that the lender shall prove the history of his loan, without prescribing the means by which he will do so, but leaving him to find them. If banias kept satisfactory accounts, they would have little difficulty in proving their just debts; the fact that they do not do so is due as often as not to their desire to load the dice; and if the result is often their own loss, they alone are responsible.

4. The direction in which improvement is possible seems to be in that of giving money-lenders more facilities for recovering their dues once they have proved them. I am unaware of the extent to which section 29 of the Dekkhan Act is used in the rest of the province, but I have never heard of a case of its employment in Sind. Possibly a more free use of it might restore to money-lenders some of the sense of security which they have lost by the limitations set on the sale of immoveable property in execution of decrees. Should this view be correct, I would suggest that the management of property, instead of being entrusted to the Collector, should be handed over to some such officer as the Manager, Incumbered Estates, who has a staff specially trained for the purpose; and by whom the management can be run on lines taught by experience. I am led to suggest this after seeing the haphazard way in which minors' estates, now placed under the Court of Wards, were formerly managed when in the charge of the Collector.

5. As regards the registration of money-lenders, I am afraid that it would only affect a small class of the transactions between debtor and creditor in Sind; it would be difficult for instance to register the shopkeepers who supply grain or cloth on credit. I anticipate also that injustice may be done by the difficulty in distinguishing between the regular money-lender and the small shopkeeper, who merely obliges a customer with an occasional loan, or even the zamindar, who lends a friend money in order to help him in an emergency.

No. 58.

Collector's Office, Hyderabad, dated the 22nd—23rd July 1912.

From—C. H. Blathwayt, Esq., I.C.S., Collector of Hyderabad;

To—The Honourable Mr. S. R. Arthur, I.C.S., on special duty.

In reply to your No. 54 of 29th June—5th instant, I have the honour to attach herewith a full note on the subject made by my daftardar, Mr. Hashmatrai Anuprai, who is one of the oldest Deputy Collectors in Sind and naturally has very wide experience.

2. I find myself in agreement throughout with Mr. Hashmatrai's views and so need not recapitulate them. I would particularly lay stress on the greater illiteracy prevailing among the agriculturists in Sind than, I understand, prevails

in the Presidency, and in particular to the fact that many of the village banias in Sind are also illiterate. It is also well known that in Sind the agriculturist does not keep his "rayat receipt book" with him in the same way as is done in the Presidency. Examination of rayat receipt books in Sind is a difficult matter and almost impossible to carry out in the actual villages, as none are as a rule forthcoming there. They are generally either left with the bania or with the tapedar. Consequently it is very doubtful whether the Sind agriculturist would keep his duplicate of the bania's accounts with himself or would be able to produce it on demand.

3. Though so far as I can see, *primâ facie* the proposed legislation would be likely to be in the end more favourable to the bania than the agriculturist, I would have no objection to its being introduced experimentally into one taluka. I am not in favour of any registration or licensing of money-lenders.

Note.

Below the Honourable Mr. S. R. Arthur on special duty's letter No. 54, dated 29th June—5th July 1912.

Submitted to the Collector of Hyderabad.

The system proposed in paragraph 5 of the Honourable Mr. Arthur's letter is more suited to the Presidency proper, where probably both the money-lender and his client (the agriculturist) are literate and therefore able to watch and safeguard their own interests. But the condition of Sind in point of education is quite different. In Sind the agriculturist is mostly an illiterate Mahomedan, while the money-lender is a literate (Hindu) bania and in spite of this it is strange that for ten disputes that are brought in court there are a hundred in which the cultivators and the bania settle their accounts amicably and peacefully. I must say that the unwritten code of morality and honesty works much better than any codified law which entails interference of Government officials. It is true that the bania charges heavy interest and exorbitant prices for goods supplied, but cases of fraud and forgery are few and far between. False accounts and acknowledgments are got up when the account is time-barred or when the debtor is dead and his account runs over many years. In addition to the heavy interest and exorbitant price, the money-lender makes a profit out of the produce which he receives from his client in the shape of repayments. The produce is either grain or cotton pods and is set off by the bania towards his debt at a much lower rate than the market price. The parties being unequally matched, the result is the agriculturist is generally a loser. The organisation of credit in a society so conditioned is an extremely difficult undertaking. To achieve the object with which the Dekkhan Agriculturists' Relief Act has in view, *viz.*, that the true history of the transactions between the debtor and the creditor should be ascertained, it will be necessary to educate the agriculturist so as to take care of himself. So long as the debtor is immersed in ignorance and cannot protect himself, the remedial measures applied by Government must be precarious.

The suggestions made by the Honourable Mr. Arthur in paragraph 5 of his letter are :—

(1) That every money-lender should keep a separate account in duplicate of his dealings with each agriculturist and client. All transactions between them should be entered when they take place in both copies and attested by the signature (or the thumb-impression if illiterate) of both parties.

(2) One of these copies should remain with the money-lender and one with the client concerned.

(3) No plaint should be entertained by a court without an extract from the account being attached to it and the account itself must be produced at the time of hearing.

(4) No evidence should be admissible in evidence in variation of entries attested, as provided above, by the parties.

(5) No proof of payment by money-lender to client should be admitted, unless entered in the accounts and attested.

(6) No evidence of payment in cash or kind by client to money-lender should be admitted after the expiry of thirty days from the alleged payment.

Now I think there is no civilised country in which any of these remedial measures are adopted by Government. To my mind, instead of introducing these measures, it will be better to legislate that the Mahomedan agriculturist of Sind is incapable of contracting with or borrowing money, and that any one financing him or dealing with him will do so at his own risk.

Coming to remedy No. 1, we must remember that the bania money-lender is shrewd and he will invent several methods and will adapt himself to these measures and gain his object. There are some banias who are as illiterate as their Mahomedan agriculturist client and yet he will be required to have accounts written up by others who are literate. There are several in the rural areas who cannot write and keep proper and regular accounts, though they can and do jot down their transactions anywhere and everywhere in a *kacha* book of several pages, which is the only book he keeps. Many of these banias will say when they are called in evidence that they are illiterate, and that they do not keep any accounts at all. They will only produce acknowledgments written and attested by other persons. The courts will in such case be required to examine witnesses to prove that the bania is really illiterate. In many cases this measure can be avoided.

As regards measure No. 2, we should remember that when we go now to a village and ask the rayat to produce his receipt book and the bill of demand that is furnished to him by the tapedar, we are told that both these documents are lost or were burnt in fire or were destroyed by floods. In many cases the bills of land revenue assessment are not produced at all. The suggestion is no doubt captivating, but in actual practice how many agriculturists will take care to preserve the duplicate books and how many will honestly produce these when called upon to do so? The system will again resolve itself into how many cultivators are able to take care of themselves, to preserve their duplicate books, to see that the entries of repayments are entered and signed in them by the banias, and to thumb-mark each item in the banias' books. It is possible that in the Presidency proper the agriculturist is not so ignorant as he was a generation ago, but in Sind the average cultivator is as ignorant as he was before, and if entries in duplicate books signed by both parties are alone given credence to, it will be the agriculturist who will suffer for, while the bania will have all debit entries so signed, the credit entries which are repayments will be conspicuous by their absence.

No amount of legislation will make a bania or a cultivator more honest than he is by habit, education, and training. It is possible that a few men like Rao Bahadur Warad of Sholápur may in Sind keep a duplicate set of books, one of which to remain in the possession of agriculturist-debtors, but these could do so on their initiative without the aid of legislation. If they do so, the courts will as a matter of course place great reliance upon their books, but a compulsory system of duplicate books will act prejudicially to the cultivating class so far as repayments are concerned. The system will at its start perplex the bania creditor, but after lapse of time he will get accustomed to it and to the procedure of courts and he will adapt himself to it. I do not think that the cultivating class has reached that stage of civilization in which they will insist upon all cash payments and kind payments being attested in the manner indicated.

The third measure is almost entirely in favour of the bania money-lender, who has to attach to his plaint an extract from the account and to produce the account itself at the time of hearing. As the money-lender will be required to write up the account, he, being interested himself, will take good care to prepare the account more vigilantly than he does now and will evade making entries of repayments made by his clients. The burden of proof of these repayments will lie on the client, and measures Nos. 4 and 6 will operate against the latter.

Any legislation in this matter will not secure the desired object to put the law on lines, which will put a premium on honesty, and not dishonesty. Human

nature is frail and depraved and much wants more. The ingenious and shrewd bania money-lender will invent method to meet the requirements of such legislation and at the same time to secure his object. A borrower is as a rule subservient to the money-lender, though as time advances he is becoming less so. But need impels the agriculturist to sign to any entry or to any document which his lender may make, and once he signs or thumb-marks it, he is in a trap. Again, if he refuses to do so, the accounts when produced in court will not receive credence as regards the items which are not signed or thumb-marked and as a result of this the agriculturist suffers.

In spite of all these drawbacks of this system, I am in favour of its introduction as an experimental measure in one taluka with some modifications. I would propose that the duplicate accounts may be legalised, but the books need not be signed or paged by Government officials. But the entries should when attested be conclusive as regards the transactions. The system should be extended, both to literate and illiterate savkars, and the latter might be required to have accounts written up by some literate *mehta* (clerk) or friend, who should also affix his signature to every entry in addition to two parties' thumb-marks, etc. After the system has worked for about a year or more, the results might be judged and if found successful a travelling inspector for a taluka or a division might be appointed to inspect the accounts and thereafter some more reforms might be introduced.

If the profession of money-lending is confined to a licensed class, it is likely to interfere too much with the freedom of contract, on the one hand, and the credit of the cultivator on the other. Already the credit of the cultivator is very little.

Until legislation for duplicate account system is passed, the sadar court of Sind might rule that duplicate accounts on the above lines if produced in court in any suit should receive great weight and consideration at the hands of all judges.

(Signed) HASHMATRAI ANUPRAI,
Daftardar to the Collector of Hyderabad.

25th July 1912.

No. 59.

District Court, Hyderabad, W. D., No. 13, dated the 25th July 1912.

From—A. C. Wild, Esq., I.C.S., District Judge, Hyderabad;

To—The Honourable Mr. S. R. Arthur, on special duty, Bijapur, at Poona.

With reference to your No. 54, dated the $\frac{29\text{th June}}{5\text{th July}}$ 1912, I have the honour to state that the reports of Subordinate Judges of this district show a remarkable variety of opinion as regards the utility of the proposed measures. They are, however, generally in favour of the proposal to introduce the duplicate systems of accounts, the entries in which should be *presumptive* evidence, as it is quite possible for a dishonest money-lender to make false entries in them. A practical difficulty is that the thumb-impressions of the debtor will often be smudged, but if the account is discarded on this account, the money-lender will presumably learn how to take clear thumb-impressions. A further consideration is that the system will give a great deal of trouble to the money-lender, who makes advances to his clients while going round the neighbouring villages. He will find it inconvenient to take with him the account of each debtor and will perhaps take a bond from him at the beginning of the season and dole out the amount of it to the cultivator in small sums as required.

The system, if introduced, should be obligatory on all money-lenders, and the books should be paged, sealed and issued from a Government office. All money-lenders should be registered.

As regards the inspection of the accounts by Assistant Collectors and Mamlatdars, there is a practical difficulty, for it is rare that both the money-lender and the debtor will be present when the Assistant Collector or Mamlatdar visits the village.

Lastly, as it is impossible for the debtor to compel the money-lender to enter a payment into the account, there should be no time-limit for proving payments. A time-limit, however, might be subsequently fixed, if a section is added to the Dekkhan Agriculturists' Relief Act enabling the debtor to apply to the civil court to compel the money-lender to register the payment.

No. 60.

Collector's Office, Lárkána, dated the 2nd August 1912.

From—J. R. Martin, Esq., I.C.S., Collector of Lárkána;

To—The Honourable Mr. S. R. Arthur, on special duty.

I have the honour to acknowledge the receipt of your No. 54, dated the $\frac{29\text{th June}}{5\text{th July}}$ 1912.

2. The first and main point on which the Commission desires an opinion is the proposal for duplicate accounts, in which every transaction between the parties will be entered and each entry in which is to be signed or attested by the thumb-impression of both parties, one copy remaining with each, etc.

However good in theory this may appear, I fear that as things are at present in Sind it would be impracticable and impossible in actual working. Of the first part of the proposal, the keeping of accounts in duplicate, I doubt the utility. Provided zamindars were intelligent and shrewd in these matters, it would of course be a check and a most efficient check on any crooked dealing on the part of the bania-creditor. But this presupposes the very qualities whose absence renders necessary all this special protective legislation, and judging from facts as I know them, it would probably be found that the duplicate book remained with the bania himself and that the Mahomedan creditor will be ever ready to put a signature or thumb-impression to them, provided he gets what he wants for the time being and that the bania is not unduly oppressive. If they were with the debtor, they would most probably be lost or mislaid and thus not kept up to date, until the bania through fear of the consequences compelled production and afterwards kept them with himself. Even now rayats' receipt books are as is well-known seldom kept by the revenue-payers themselves, but are deposited with the banias or with the tapadar on whose exactions they are supposed to keep a check.

As a matter of fact the gist of the difficulty, as the Assistant Collector, Sehwán, points out in his report, is not so much that accounts are left in the hands of one party only, as that one of the two parties alone can read and understand, and, it must be added, manipulate them.

3. It has not been stated in what character it is proposed that the books are to be kept. It is hardly possible to provide that it should be Arabic-Sindhi, while if in Hindu-Sindhi, the zamindar, even if he has his account, is almost as badly off as ever with a document in hieroglyphics which he cannot understand and which it is unlikely he can get a fellow Musalman who can. Of course, he can take it to some other bania shopkeeper, but such energy is hardly likely to be shown and the neighbour is hardly likely to give his co-religionist away, even if he can read his writing, which is by no means a certainty. Again and again I have found banias of one village unable to make out the accounts of those of another.

4. But even if the utility of duplicate accounts be admitted, the procedure in which it is suggested they should be made out is another matter. To have every entry signed or verified by a thumb-impression is an obvious impossibility. Such a system could, I think it is safe to say, not exist for a single week. The bania is not merely a money-lender, he is also the shopkeeper, and the ordinary zamindar's accounts contain all sorts of small items; household goods, grain for

use, for seed, small sums of money for expenses, articles got by the debtor himself, by his servants under his orders, or by members of his household, and it is absolutely impossible to get signatures or thumb-impressions for all of them. This system of accounts or indeed any system of accounts does not and cannot meet the system of exactions practised by way of deduction of interest in advance, lungis, *i. e.*, lump sums given to the creditor for his complacency in making the advance, or *mehmani* gifts to him as part of the zamindars' hospitality, or to meet his expenses.

5. As for the making of such accounts conclusive evidence, I believe that this would make matters worse instead of better, and I find that every person, official or non-official, who has reported to me on the subject is of the same opinion. It is needless in view of what has been stated above to go into reasons in support of this view.

If introduced at all, a presumption in their favour is quite enough.

6. Even apart from the question of the duplication of accounts and the attaching to them of the incidents proposed in paragraph 5, I am of opinion that the paging and sealing of banias' account books would be an advisable and possible measure.

7. On the other hand, the licensing of money-lenders is not, I believe, either desirable or practicable. Every bania shopkeeper is in Sind, I cannot speak for other parts, a potential money-lender, if not one in esse. Money-lenders are not a distinct class. Any shopkeeper with money lends it out. Registration if successful would add to the economic difficulties and complications of the whole population and be a continual and harassing restriction on agricultural credit. Personally, I do not see how it could have any prospects of success.

8. As for the checking of banias' books by Assistant Collectors and Mukhtyarkars, the proposal is outside the range of practical politics. I have yet to meet the Assistant Collector or indeed Mukhtyarkar, who is capable of performing any such task, even if he has time for it, which neither of the above officers have.

No. 61.

Collector's Office, Sukkur, dated the 7th August 1912.

From—G. E. Chatfield, Esq., I.C.S., Collector of Sukkur;

To—The Honourable Mr. S. R. Arthur, on special duty.

With reference to your No. 54, dated 5th ultimo, I have the honour to report that when money is borrowed by agriculturists, they sometimes receive it in person, sometimes through other members of the family and sometimes through their labourers and others engaged in agricultural operations.

2. Transactions take place, both in cash and in kind, at no fixed hours, but at any moment in the day and many of them constitute very small items.

3. It would be impracticable for the agriculturist to produce his copy of the account each and every time, for entry of the transactions, and taking of his own signature or thumb-impression or those of the person to whom payment is made on his behalf.

4. The money-lender is generally a shopkeeper, who has the business of his shop to attend to, and finds it difficult to write up each client's account punctually and regularly.

5. Each transaction is therefore first written up in a day book or on a wooden tablet and then transcribed in the respective account to which it pertains, in due course.

6. The enforcement of the proposed system would thus certainly be difficult, both for the creditor and for the debtor.

7. An example of the uselessness of double accounts under the conditions prevailing in Sind is afforded by the rayat's receipt book. The agriculturist seldom cares to ascertain whether its contents are correct and leaves it generally

in the possession of his money-lender. The same would be the fate, it is believed, of the duplicate copy of the account book.

8. Moreover, where the debtor is literate, double accounts are of little help to him. When one party is illiterate and the other literate, anything that tends to lay more stress on documentary evidence and written papers only puts the illiterate more completely at the mercy of the literate.

9. Such being the case, I am not in favour of extension of the system to Sind, nor can I suggest any other practical solution of the difficulty.

10. The system of registration and license of money-lenders would simply make the business a monopoly and does not therefore commend itself to me.

11. The revenue officers cannot conveniently find time to inspect private accounts, even if there be no objection on the part of the money-lenders to produce them for inspection, which would hardly be the case.

12. In short, so far as Sind is concerned, the arguments adduced do not convince me. It is not only that the agricultural population is illiterate, but that the bania keeps his account in a character which is not understood by any but banias and a few experts. Even banias are not always able to decipher one another's characters, since there are many local varieties. This naturally engenders a feeling of complete helplessness in the mind of the agriculturist, who perhaps does not act so foolishly as would appear in putting himself entirely in the hands of his bania. If he insists on precautions and business safeguards, he is showing distrust and at the same time the game is hopelessly against him. Nevertheless he must borrow. The natural and original safeguard was that when the bania became exorbitant he was knocked on the head and that when the borrower repudiated his debts no one would lend him money. That safeguard is gone now, so far as physical violence is concerned. The only possible means of replacing it is to make the bania feel that the court will not accept his accounts without enquiry and may cut the debt down to a small sum. It is not possible to devise any system of accounts which could without risk of injustice be accepted as final to the exclusion of oral evidence.

No. 62.

Collector's Office, Karáchi, dated the 27th July 1912.

From—H. S. Lawrence, Esq., I C.S., Collector of Karáchi;

To—The Honourable Mr. S. R. Arthur.

In reply to your letter No. 54, dated the 29th June/5th July 1912, I have the honour to state that in my respectful opinion the proposals put forward contemplate too great an interference by Government agency in the private relations of the people. Before such measures should be adopted, it is desirable that, firstly, the necessity of a change of system, and, secondly, the feasibility of the proposed change should be proved.

I regret that I am not in possession of sufficient information on either point.

2. I venture to suggest that the conditions of the alleged success of the duplicate system of accounts in force in Bhávnagar should be stringently investigated. *Primâ facie* I am of opinion that in Sind no debtor would agree to keep his copy. You are aware that in Sind the creditor uses one script, and the debtor (when literate) another.

3. The fact that the provisions of Chapter IX of the Act have been a dead letter in the Deccan does not encourage the application of more rigorous provisions elsewhere.

4. I am also of opinion that the registration of money-lenders would increase the rate of interest and be generally prejudicial to the interests of agriculturists.

No. 63.

District Court, Sukkur, dated the 16th July 1912.

From—S. J. Murphy, Esq., I.C.S., District Judge, Sukkur-Lárkána;

To—The Honourable Mr. S. R. Arthur, I.C.S., Dekkhan Agriculturists' Relief Act Commission, Poona.

Referring to your letter No. 54 of the 5th July 1912, I have the honour to state that the proposal that every money-lender should be made to keep an account of all his transactions with agriculturist clients in duplicate, every entry in which is attested or impressed by both parties, appears to me to be a good one. It is practically the system a Savings Bank adopts in dealing with its clients, and on the analogy of such institutions I would prefer a paid and stamped pass-book. The making of entries in such books conclusive evidence of the transactions they represent, is too abrupt a change; on the introduction of the pass-books they should be no more than presumptive evidence of loans and payments. If adopted at all, the system should be obligatory: for it is not practicable to discriminate between the literate and the illiterate money-lender. The probable result will be to drive the illiterate usurer out of the business: this need not be deplored.

A necessary corollary of the scheme is the keeping of a day book showing the daily transactions and balances: for in its absence the correctness of the pass-books entries can neither be tested nor accepted.

As stated in your 12th paragraph, I also feel that the question of accounts is one beset with difficulties not susceptible of real solution: though the system proposed is open to all the objections inherent in any plan of helping those unwilling to help themselves, yet on the whole it is probably the most feasible of any yet put forward. I do not know how far, in breaking with precedent, the Commission is prepared to go in its recommendations to Government, yet I feel that in reality all proposals of change on such lines are essentially a treatment of symptoms rather than a cure of the evil.

Briefly, the problem as it appears to me, is that of financing the small landholder. Owing to a variety of causes, principally, the uncertainty of title (due largely to the Hindu and Mahomedan rules of inheritance), periodic failure of the crops, the dishonesty of debtors and difficulties in recovering, the value of the security (not of the land) is small and money-lending a speculative business. If honestly carried on, it can never pay on a small scale. Mofussil money-lenders generally have little capital, and if honest, cannot live by their business. In practice they are consequently dishonest.

Of the causes I have mentioned only two can be modified. A record of title, as is kept in most modern states, *e.g.*, Australia, is out of the question. The laws of inheritance cannot be touched. Something, but not a very great deal, can and is being done to guard against failure of the monsoon by irrigation. The debtor, if he knew he was being honestly dealt with, might in most cases act honestly himself. The plain solution appears to me to lie in encouraging the large money-lender, who is able to average out his bad debts over a considerable number of transactions and who can afford to wait and accept a lower rate of interest; and thus by competition to squeeze out of the petty usurer, who has to resort to trickery and extortion to live. As matters now stand, large money-lenders seldom trouble the courts, their claims are easy of decision, and I fancy, their clientele generally contented. Joint Stock Banks lack the necessary local knowledge, and do not lend on the security of the land in the mofussil. Agricultural Banks can hardly finance the county side and have their limitations. At present, the large money-lender is on equal terms with the smaller fry. He probably gets the cream of the trade, but it is not worth his while to lend to the shaky debtor of doubtful character and poor credit. His smaller brother takes such cases—and causes all the trouble. If the large money-lender were given an advantage, he could practically squeeze the small and unscrupulous usurer out of the market.

The advantage most likely to be appreciated is a power of quick recovery, which could be given him in a variety of ways, *e g*, by a summary civil procedure with law court fees, or assistance through the revenue courts. In return, Government could insist on a deposit as security for misconduct, a complete system of accounts and pass-books verifiable at will by Government

officials, and a maximum and minimum rate of interest to be charged. I believe such a system would work well on a large scale, and it is at least worth trying in a selected area as an experiment. The details, conditions, etc., could, of course, be worked out and modified at will; and the area assigned to each registered money-lender adjusted, so as to ensure that he has some personal knowledge of his clients, which knowledge is, I think, necessary for the success of his business. It is with the utmost deference that, in conclusion, I would say that the real solution of the problem appears to me to lie generally on lines such as those suggested above.

This court being in vacation and your request for a reply urgent, I regret that I have been unable to consult any of the Subordinate Judges on the proposals put forward in your letter under reference.

No. 64.

Deputy Commissioner's Office, Jacobabad, dated the 22nd July 1912.

From—J. W. Smyth, Esq., I.C.S., Deputy Commissioner, Upper Sind Frontier;

To—The Honourable Mr. S. R. Arthur, on special duty.

In reply to your letter No. 54, dated July 5th, 1912, on the subject noted in the margin, I have the honour to state as under.

Proposal to revise Chapter IX of the Dekkhan Agriculturists' Relief Act.

2. I am asked to give my views on the working of Chapter IX of the Dekkhan Agriculturists' Relief Act, 1879; but as this chapter has not been extended to Sind, I have not had any opportunity of seeing in practice whether it has served the objects for which it was designed.

3. In whatever manner this part of the Act may have worked in the four districts of the Presidency, I do not think that it would be suitable for application to Sind. Village life in Sind is of a peculiar kind. In the first place, the average cultivator uses the bania, not merely as a money-lender, but as a banker, agent, and general factotum. He not only indents on him on the occasion of marriages, etc., but he gets the daily necessaries of life from him, and if he wants money for an emergent purpose, such as for example a railway journey, he draws upon him. In return he squares his account with the bania by paying him in kind at the time of *dera* (harvest), and not only this but the daily produce of butter and such supplies is often handed over to him. The village bania too is as primitive in his ideas and methods. He is literate only in name and can hardly scribble out the notes of his dealings with his debtors and it is by no means an uncommon thing for the banias of one taluka to be unable to read the account books of those of another taluka.

4. With such a state of things prevalent here the system of account keeping prescribed by Chapter IX becomes out of the question and still more so the more elaborate system of the duplication of these accounts. To enforce such a system would deal a hard blow at the village shop, and the greatest sufferers in the bargain would be the very agriculturists whose interests the proposed amendments are designed to further.

5. I have carefully considered the proposal to register and license money-lenders' shops, and am of opinion that it would not be a practical step. In the first place, every bania is a money-lender, and either the Act would not be properly enforced, or half the banias of the country would be ruined. Secondly, it would be tantamount to officialising a very important and extensive profession, which is not entirely a power for evil, and whilst Government control works well enough in the case of liquor trade, it can scarcely be exercised over every bania's shop in the bazar.

6. I am informed by my Deputy Collector, who has had experience as a pleader, that the Sind civil courts do not arrive at their decisions in cases under the Dekkhan Act by mere guess-work—though the Court of the Manager of the Encumbered Estates, as I know from experience, does endeavour to strike a mean, and to decide as far as it can upon the equities of the case. Which of the two methods is the better, I cannot safely say.

7. The above remarks, I fear, are chiefly negative, but the scope of the Act in this district is so circumscribed that it is difficult to offer suggestions for improving its working.

Digitized with financial assistance from

Shri Brihad Bhartiya Samaj

on 31 October, 2019

REPORT

ON

THE GROUP SYSTEM OF NATURAL REGENERATION

IN

GERMANY

AND

ITS APPLICATION TO INDIAN FORESTS

BY

M. R. K. JERRAM,

Deputy Conservator of Forests, Punjab.

SIMLA:
GOVERNMENT CENTRAL BRANCH PRESS.
1913.

337RAB